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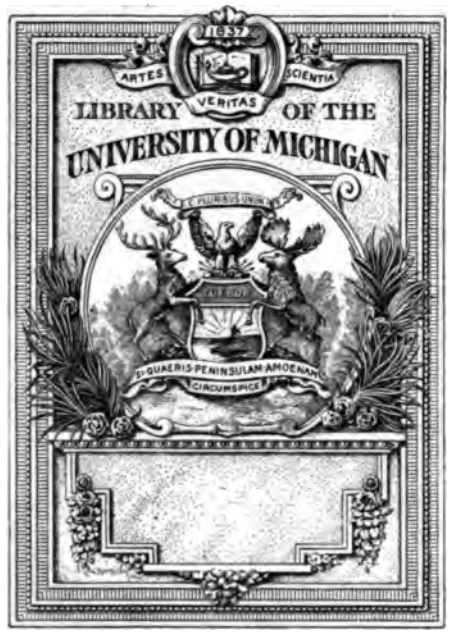

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SENATE DOCUMENTS

IN 36 VOLUMES

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 403.

FRANCHISE GRANTED BY EXECUTIVE COUNCIL OF PORTO RICO TO COMPAÑÍA DE LOS FERROCARRILES DE PUERTO RICO, ETC.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

COPY OF A FRANCHISE GRANTED BY THE EXECUTIVE COUNCIL OF PORTO RICO TO THE COMPAÑÍA DE LOS FERROCARRILES DE PUERTO RICO, AND ITS ASSIGN, THE AMERICAN RAILROAD COMPANY OF PORTO RICO.

MARCH 21, 1908.—Read; referred to the Committee on Pacific Islands and Porto Rico and ordered to be printed.

To the Senate and House of Representatives:

In accordance with the provisions of section 32 of the act of April 12, 1900, entitled "An act temporily to provide revenues and a civil government for Porto Rico, and for other purposes" (31 Stat., 77), and section 2 of joint resolution of May 1, 1900 (31 Stat., 717), amending the act above referred to, I transmit herewith copy of a franchise granted by the Executive Council of Porto Rico to the Compañía de los Ferrocarriles de Puerto Rico, and its assign, the American Railroad Company of Porto Rico.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March —, 1908.*

AN ORDINANCE Granting to the Compañía de los Ferrocarriles de Puerto Rico, and its assign, the American Railroad Company of Porto Rico, the right to construct and operate a spur or branch track from a point on its main line between the stations of San German and Hormigueros, running in an easterly direction to a point at or near the west bank of the Estero River, east of the town of Sabana Grande, a distance of about fourteen (14) kilometers.

Whereas under the provisions of Section 1 of an ordinance enacted by the Executive Council of Porto Rico on the 28th day of October, 1901, entitled "An Ordinance granting to the Compañía de los Ferrocarriles de Puerto Rico and to its successors and assigns the right to extend its railway lines to and between certain points in the Island of Porto Rico," approved by the Governor of Porto Rico on the 28th

day of October, 1901, it is declared that "the extension of the lines of the grantee herein authorized including the building of side tracks, spurs and branch roads are matters of public interest, etc."; and

Whereas under the provisions of Section 2 of the said ordinance, it is provided that nothing contained therein shall be held or construed to give to the grantee the right to appropriate or use either for its main track or for any switch or side track, spur or branch, any portion of the public highway or other public property without the consent of the Executive Council first had and obtained; and

Whereas the said Compañía de los Ferrocarriles de Puerto Rico and its assign the American Railroad Company of Porto Rico desires to construct and operate a branch track from a point on its main line between the stations of San German and Hormigueros, running in an easterly direction to a point at or near the west bank of the Estero River.

Now therefore be it Enacted by the Executive Council of Porto Rico:

SECTION 1.—That the said Compañía de los Ferrocarriles de Puerto Rico and its assign the American Railroad Company of Porto Rico may construct and operate a branch track or spur running from a point on the main line of the said railroad now operated by the American Railroad Company of Porto Rico, between the stations of San German and Hormigueros, running in an easterly direction to a point at or near the west bank of the Estero River east of the town of Sabana Grande, a distance of about fourteen (14) kilometers.

SECTION 2.—That the said branch or spur shall be constructed and operated in all respects in accordance with the terms and conditions of the ordinance above mentioned, and the rights and privileges herein granted shall be taken and deemed to be subject to all of the terms and provisions thereof, as if all the terms of the said ordinance had been incorporated herein.

SECTION 3.—That the plans and specifications for this extension and the manner of construction thereof shall be submitted to the Commissioner of the Interior of Porto Rico and be approved by him before work shall be begun. Said extension shall be constructed and maintained by the grantee in such a manner and condition as may be prescribed by the Commissioner of the Interior of Porto Rico or his authorized agent or agents, for the purpose of securing compliance with these conditions.

SECTION 4.—That this ordinance shall not be valid unless accepted in writing within 30 days from the date of its approval by the President of the United States.

SECTION 5.—That this franchise is granted subject to all the terms and provisions of Section 3 of the joint resolution of Congress entitled: "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the Act approved April twelfth, nineteen hundred, entitled 'An Act temporarily to provide revenues and a Civil Government for Porto Rico, and for other purposes,'" approved May 1, 1900, which reads as follows:

"SECTION 3.—That all franchises, privileges or concessions granted under section thirty-two of said Act shall provide that the same shall be subject to amendment, alteration, or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds

issued; shall forbid the declaring of stock or bond dividends; and, in the case of public service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation. No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable".

Done in open session of the Executive Council this the fifth day of March, A. D. 1908.

(Sgd.) W. F. WILLOUGHBY,
President of the Executive Council.

Approved this the 10th day of March, 1908.

(Sgd.) RÉGIS H. POST,
Governor of Porto Rico.

Approved this the —— day of ——, 1908.

(Sgd.) THEODORE ROOSEVELT,
President of the United States.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, Secretary of Porto Rico, do hereby certify that the foregoing five printed pages are a true copy of an ordinance entitled "An ordinance granting to the Compañia de los Ferrocarriles de Puerto Rico, and its assign, the American Railroad Company of Porto Rico, the right to construct and operate a spur or branch track from a point on its main line between the stations of San German and Hormigueros, running in an easterly direction to a point at or near the west bank of the Estero River, east of the town of Sabana Grande, a distance of about fourteen (14) kilometers," as the said ordinance appears upon the official record in my custody of the proceedings of the Executive Council of Porto Rico at a meeting held on the fifth day of March, A. D., 1908, as appears by the official record in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Porto Rico, at the Capital, on this the eleventh day of March in the year of our Lord nineteen hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.] W. F. WILLOUGHBY,
Secretary of Porto Rico.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 407.

CHURCH OF CHRIST OF ACWORTH, GA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF CHURCH OF CHRIST OF ACWORTH, GA., A CORPORATION, SUCCESSOR TO THE CONGREGATION OF THE CHRISTIAN CHURCH OF ACWORTH, GA., CLAIMANT, AGAINST THE UNITED STATES.

APRIL 9, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 8, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12461. Church of Christ of Acworth, Ga., a corporation, successor to the congregation of the Christian Church of Acworth, Ga., claimant, *v.* The United States, defendant.]

STATEMENT OF CASE.

This is a claim for a church of which it is alleged that all the lumber contained in it except the frame and roof were taken by the military forces of the United States during the civil war for the purpose of erecting shanties for winter quarters for said forces, and for the destruction by fire of the frame and roof of said church when the town of Acworth was evacuated by said forces.

On the 13th day of June, 1906, the Senate of the United States by resolution referred to the court, under the provisions of the act of March 3, 1887, commonly known as the Tucker Act, a bill as follows:

"A BILL For the relief of the congregation of the Christian Church of Acworth, Georgia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of one thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be paid to the congregation of the Christian Church of Acworth, Georgia, for the destruction of said property and the use of the materials of said church by the Army of the United States during the civil war."

The claimant appeared and filed its petition in this court on the 22d day of November, 1906, and on the 18th day of January, 1908, it filed an amended petition in

which it substantially made the following allegations: That the Christian Church of Acworth, Ga., as an organization, was loyal to the United States throughout the entire civil war; that on the 1st day of July, 1864, United States troops under the command of Gen. William T. Sherman, and under immediate command of Colonel Rogers, took the following stores and supplies from the claimant for the use of the Army of the United States, to wit, the weatherboarding, floor, and seats of said church, and that said materials were used for barracks for the Union Army, and was reasonably worth the sum of $500; that on or about the month of November, 1864, what was left of said church was burned and totally destroyed by the Union Army. That said building was not burned from military necessity but was destroyed without just reason and excuse when the Union soldiers quartered at Acworth were withdrawn therefrom. That the value of the part of said building so burned was $500.

On the 19th day of November, 1900, the congregation of the Christian Church of Acworth, Ga., was incorporated under the name of the "Church of Christ of Acworth, Ga.," and that all the right, title, property, interest, and estate of said Christian Church thereafter became vested in said corporation.

This case was brought to a hearing on loyalty and merits on the 1st day of April, 1908.

Charles W. Clagett appeared for the claimant and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The congregation of the Christian Church of Acworth, Ga. (of which the Church of Christ of Acworth, Ga., is the successor), as a church body, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States by proper authority, for the use of the Army, took possession of the church building described in the petition and destroyed the same and used part of the material in the construction of quarters. The reasonable value of said building at the time and place of destruction was the sum of four hundred dollars ($400), no part of which appears to have been paid. The value of the material is not shown.

III. The claim herein was never presented to any officer or Department of the Government prior to its presentation to Congress, and reference to this court by resolution of the United States Senate as hereinbefore set forth in the statement of the case, and no satisfactory reason is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed April 6, 1908.
A true copy.
Test this 7th day of April, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 408.

REPAYMENT OF MONEY FOR RANSOM OF MISS ELLEN M. STONE, MISSIONARY IN TURKEY.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A LETTER FROM THE SECRETARY OF STATE ON THE SUBJECT OF THE REPAYMENT TO THE CONTRIBUTORS OF THE MONEY RAISED TO PAY THE RANSOM FOR THE RELEASE OF MISS ELLEN M. STONE, AN AMERICAN MISSIONARY TO TURKEY.

MARCH 27, 1908.—Read; referred to the Committee on Foreign Relations and ordered to be printed.

To the SENATE AND HOUSE OF REPRESENTATIVES:

I transmit herewith for the consideration of the Congress a letter from the Secretary of State on the subject of the repayment to the contributors of the money raised to pay the ransom for the release of Miss Ellen M. Stone, an American missionary to Turkey, who was abducted by brigands on September 3, 1901, while traveling on the highway from Raslog to Djumabala in the Turkish Empire.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 26, 1908.*

DEPARTMENT OF STATE,
Washington, March 24, 1908.

The PRESIDENT:

As will be remembered, Miss Ellen M. Stone, an American missionary to Turkey, was abducted by brigands on September 3, 1901, while traveling on the highway from Raslog to Djumabala in the Turkish Empire.

Our diplomatic and consular representatives in Turkey, in correspondence with the Department of State, shortly after the capture, indicated their belief that the motive therefor was to obtain a ransom and stated that they had requested the Turkish officials to abstain from

too close pursuit of the brigands, lest the death of the captured might result.

From later correspondence with our representatives it appeared that the brigands had retired to the mountains with the captive, probably over the border into Bulgaria. The exact location of the party during the captivity, however, is not established by any evidence in the possession of the Department of State, nor does it appear clearly of what government the bandits were subjects.

About October 1, 1901, the bandits opened negotiations for a ransom, demanding £25,000, and transmitting a letter from Miss Stone, asking that the sum demanded be paid and that pursuit of the brigands by the Turkish troops be stopped.

Our diplomatic representatives were of the opinion that Miss Stone's release could only be obtained by the payment of the ransom, and the State Department shared this view. Miss Stone's friends, of course, entered into correspondence with the Department regarding the payment of the ransom, and were told that it must be raised by private means.

On October 3, 1901, the State Department wrote to the Rev. Judson Smith, of the American Board of Commissioners for Foreign Missions, Boston, Mass., as follows:

> It seems imperative that the amount (of the ransom) should be raised or pledged, so as to be available by your treasurer at Constantinople in season to save Miss Stone. Statutory prohibitions make it impossible for this Government to advance the money or guarantee its payment. If paid by Miss Stone's friends, every effort will be made to obtain reimbursement from whichever government may be found responsible under international law and precedent. In the event of its proving impossible to hold any foreign government responsible for the capture and to secure the repayment of the money, this Government is willing in the last resort to urge upon Congress as strongly as possible to appropriate money to repay the missionaries.

It is claimed that this assurance given by the Department in its letter to Mr. Smith, to the effect that, as a last resort, a recommendation would be made to Congress looking toward the appropriation of a sum sufficient to pay the donors, was largely instrumental in enabling Miss Stone's friends to secure the sum of $66,000, which was raised through public subscription in this country by October 23, 1901, for the purpose of effecting Miss Stone's release.

After negotiations of considerable length, the brigands finally consented to accept the amount raised and arrangements were made by United States Minister Leishman for the payment of the money at a point near Bansko, Macedonia, the Turkish authorities consenting to withhold their troops from the vicinity of the place in order that the negotiations might have a successful issue.

The release of the captive was not obtained so soon as expected, but was finally reported by Minister Leishman on February 23, 1902.

After careful consideration of all the facts my predecessor, Mr. Hay, decided on January 19, 1905, that it was not advisable to attempt to hold the Turkish Government responsible for the capture and to secure the repayment of the money. Upon the subsequent application for reconsideration of this decision Mr. Hay again, on April 11, 1905, reaffirmed the judgment which he had originally expressed. Upon a further review of the same subject I have come to the conclusion that it is not advisable to reverse or change the conclusion which Mr. Hay reached.

It would seem, therefore, that the Executive Department is bound to make good its promise to recommend to Congress that money be appropriated to repay the ransom money, a promise which was probably relied upon by many of those who contributed of their private means to save the life of an American citizen believed to be in the gravest peril.

Accordingly I have the honor to advise that Congress be recommended to appropriate an amount sufficient to repay the contributors.

Respectfully submitted.

ELIHU ROOT.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 409.

HEARING

BEFORE THE

SELECT COMMITTEE ON WOMAN SUFFRAGE

OF THE UNITED STATES SENATE

ON THE

JOINT RESOLUTION (S. R. 47) PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROVIDING THAT THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE SHALL NOT BE DENIED OR ABRIDGED BY THE UNITED STATES OR BY ANY STATE ON ACCOUNT OF SEX.

MARCH 27, 1908.—Ordered to be printed.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908.

RIGHT OF WOMEN TO VOTE.

WASHINGTON, D. C., *March 3, 1908.*

The committee met at 10 o'clock a. m. in the Marble Room of the Senate.

Present: Senators Clay (chairman) and Johnston.

Representatives of the National Woman Suffrage Association appeared.

The chairman, Senator Clay, introduced the speakers, the first of whom was Rev. Anna Shaw, president of the National Woman Suffrage Association, Moylan, Pa.

STATEMENT OF REV. ANNA SHAW.

Miss SHAW. Mr. Chairman and gentlemen of the committee: For half a century women who believe in the practice as well as the theory of the basic principle of a democracy, that "government inheres in the people," have made these biennial pilgrimages to the National Capitol to address your committee upon the justice of the application of this principle to women citizens of the United States.

Since our hearing in this room two years ago rapid progress has been made in the enfranchisement of women throughout the civilized nations of the world.

Finland has granted universal suffrage to her people, and 19 women are members of the Finnish parliament. Norway, which granted municipal suffrage in 1901, last year extended parliamentary suffrage to women. Natal, South Africa, has granted municipal suffrage, and England and Iceland extended the right to vote in municipal affairs to that of eligibility to all municipal offices to women. In Denmark at the present time municipal suffrage is assured to women.

This so-called Republic stands almost alone among progressive nations in continuing to withhold from women political enfranchisement.

The reason is not hard to discover, for we can not believe it is due either to the fact that the men of this nation are less just than those of other countries, nor that our women are less patriotic or less capable of exercising the suffrage than are women of other lands. It is due rather to the more difficult method by which suffrage is conferred. In the nations of the older civilizations where suffrage has been conferred upon women it is necessary to obtain a majority vote of one parliament, which has the power within itself to grant it, while in this nation each State has its separate legislative body, in which not only is a majority demanded, but in some States a two-thirds majority of one and sometimes of two consecutive legislatures, not to grant the law, but to submit an amendment to the State con-

stitution to the electors, where again a majority, and in some cases a two-thirds majority, vote of all electors voting at the election is required to carry it. When we consider the character of our electorate, educated and ignorant, good and bad, wise and otherwise, foreign and native born, white and black, such a task is indeed formidable. Still, these are not all the obstacles with which we are met. Powerful influences, with which the gentlemen of the committee are familiar, hedged about by vast organizations, unlimited wealth, and political party machinery, smother the bill in the committees, prevent the measure from being reported to the various legislatures, much less from being submitted to the voters. It is because of these almost insurmountable obstacles which impede the progress of woman's political freedom that we make our appeal to Congress, asking for a seventeenth amendment to the National Constitution, forbidding the disfranchisement of United States citizens on account of sex.

This would bring our case, as in Europe, before the elected and selected bodies of assumedly intelligent legislators of the various States in giving just and fair discussion of its merits, the ultimate result of which we believe would make this nation, in fact as well as in theory, a government of, by, and for the people, instead of what it now is, a government of, by, and for men.

That is, a male oligarchy would be evolved into a democracy.

In asking your committee to report our bill to the Senate we are not asking you to express your opinion in its favor, nor to implicate yourself in any manner to its advocacy, but simply that you will report it favorably or unfavorably, according to your judgment, for action by the Senate of the United States.

The petitioners who will present their claims have come from many States, authorized by their associations to plead their cause, not for themselves alone but for the millions of men and women who within the past two years have passed resolutions advocating woman's political enfranchisement, believing women need the ballot for their own protection and for the welfare of their country.

STATEMENT OF MRS. BELVA A. LOCKWOOD.

Mrs. LOCKWOOD. Gentlemen, you compose a committee, the last of 71 on the list, appointed and selected to discuss, consider, and report the matters referred to you, pertaining to the subject and object of your committee, "woman suffrage," which you are supposed by your appointment not only to favor but to thoroughly understand; a question that has been agitated before the country, and before the honorable body which you have the honor to represent, for the last half a century, and a question involving, according to the last United States Census, the welfare of something more than one-half of the people of the United States. I think I speak advisedly when I call women "people," but it has been frequently asserted on the floor of the Senate that they are not citizens, and the minute they are so adjudged they will be entitled to the ballot under the fourteenth article of the amendments to the Constitution.

It is a little anomalous that this article should have been adopted, and the educated, cultured women of the United States left out. The right to the ballot, the right to a voice in the matter of who shall rule over them, and how they shall be taxed, has ever been considered

as the crowning glory of men since the adoption of the Constitution. Women have, in addition to this, an earnest desire and interest as to how their homes and children shall be protected and their persons and property preserved.

This committee, gentlemen, next to the smallest on the list in point of numbers (the Committee on Indian Affairs has 11 Senators, the Committee on Indian Drepredations has 9, and the Committee on the Five Civilized Tribes has 5, with that renowned fighter, Benjamin R. Tillman, at their head; 25 in all) is the most important committee on the list, and carries within its deliberations the most momentous question, involving the welfare of the United States and the perpetuity of the Government: justice, liberty, and equal rights.

We come to you, gentlemen, as the English people appealed to King John of England, when they wrung from him that famous Bill of Rights, the Magna Charta, that formed not only the foundation or bulwark of English liberty, but which the colonists of this country insisted on embodying into our own laws and bills of rights when, with toil, privation, bravery, and blood, they settled this country, by landing in inhospitable, rock-bound New England, and undertook to make its soil productive.

The chairman of this committee and Senator Burkett are strangers to me, but from the position of the first and the State which the latter represents we must consider them both favorable to the matters before them to-day, while the eloquence, the liberality, the broad-mindedness, and the favorableness of Senator Albert J. Beveridge, not only on this but on every great question, must place him among the foremost statesmen of his time. As for Senator Johnston, I met him on his native heath in Birmingham, Ala., in November last, when he addressed the League of Press Clubs, and where I saw the women of his State—the Christian women, with their children and their pastors—parading the streets of Birmingham with banners and bands of music in their effort to arouse enthusiasm enough in the men of the city to vote (as they could not) to put down the liquor traffic. I have faith in the honesty and uprightness of Senator Johnston on this question of woman suffrage.

When we reached Atlanta and called upon Governor Hoke Smith we found the people of Atlanta already rejoicing that they had a State prohibition law, and that the influence of the women of the State had helped to bring it about. The ballot in the hands of these women would have decided the question without this extraordinary effort.

Last week a Member from North Carolina, where the people are trying to get a prohibition law, said to me: "I wish you suffrage women were down in North Carolina. We need you there to help us."

In the District of Columbia, my own home for the last forty years, we are now trying to get a prohibition of the liquor traffic, and we want the vote of the good women of the District on this question as well as that of the men. And why not? The women of this District own fully one-half of the real estate outside of that owned by the United States. We are taxed without representation even by men, one of the cardinal features of the Revolution.

I was asked to represent here to-day the women of Wisconsin, Rev. Olympia Brown Willis, president, who are not able to get their representatives here in a body. Women as a class control but little money, and the railroads no longer give passes to the favored few.

Wisconsin allows her women to vote on the school question, and so does Illinois, Massachusetts, and New York, and several other States. And the new State of Oklahoma has a clause in her constitution allowing women to vote on the school question. In justice to herself and the enlightenment she has manifested on other questions she should have given to her women the same liberty and privileges claimed by her men. With them she endured the hardships and privations incident to the settlement of a new country, and equally with the men every accredited Indian woman there of the Five Civilized Tribes now has her freehold of 140 acres and must in the near future be taxed to support schoolhouses and highways and will become as much an integral part of the body politic as the men of the State. They have already voted liquor out, so the women have two points there; but why did they not make her a full-fledged citizen? Representative Carter, of Oklahoma, was made to say in yesterday's Star that he was "willing that the women of Oklahoma should vote when there was not a woman opposed to it." That will be when the millenium is here, and a long time after Mr. Carter will be out of Congress.

The question of woman suffrage has passed beyond the realm of ridicule and experiment. It has been tried in Wyoming, Utah, Idaho, Colorado, where full suffrage has been given; in Kansas, where municipal suffrage has been a success; in Wisconsin and in Louisiana, on the question of issuing bonds for the State, where her property rights are concerned, and we now come to the highest and most imperative right—the protection of her own homestead, her person, and her children.

If woman is inferior to man why draw the line? You do not draw it on an inferior man unless he is an idiot. If it is because you do not wish to multiply votes, then draw the line at the adult son who lives at home, not on the mother and keeper of the home. Gentlemen, you forget that the world moves, and that the educated, cultivated woman of to-day is not the woman of a century, or even a half century, ago, and that now the State university of the country is the daily press, from which every woman aspires to graduate.

This Senate resolution, No. 47, asks that "The right of citizens of the United States to vote shall not be denied or abridged by the the United States or by any State on account of sex;" and that this question shall be submitted for ratification to the legislatures of the several States of the Union. The States may adopt or reject the measure, and it resolves itself into the plain wish of the people. It can hardly be said to invade the right of every State to manage its own internal affairs, when such management does not interfere with the vested rights of the common people. It would add, if carried by a majority of the States, one more amendment to the Constitution; but the fifteenth amendment might be amended for the same purpose by adding the one word "sex;" but if a woman is really a person she is already included in the fourteenth amendment, which says, "All persons born or naturalized in the United States and subject to the jurisdiction thereof are 'citizens' of the United States, and of the State wherein they reside; * * * " so that only a declaratory law is necessary by the Congress of the United States to make women eligible to the ballot.

The ninth amendment to the Constitution reads as follows: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Are you, gentlemen, prepared to assert that women are neither citizens nor people?

STATEMENT OF MRS. FANNIE J. FERNALD, PRESIDENT OF THE WOMAN'S SUFFRAGE ASSOCIATION OF MAINE.

Mrs. FERNALD. Mr. Chairman and members of the committee, when that noble woman, Susan B. Anthony, stood for the last time in this place I heard her say "Seventeen times have I come asking the right of suffrage for women, and we shall still continue to come. It may be that I shall not be here but some one will." I count it a high privilege to be among the least of these.

One year ago I stood before the committee in the seventy-third legislature of Maine and plead for the right of self-government for women, on the ground that as a class we are intelligent, industrious, thrifty, and frugal; that we are good mothers and wives and home makers; that we are contributing toward the maintenance of government, and they said it was too bad to lay this burden upon women; that when a majority of women wanted the ballot they could have it.

It may be that my State, ever proud to recognize the integrity of its women, my State in which the laws are so much better and fairer than in many States, hesitates to concede this right because it has been so long and so persistently withheld by the Federal Government.

We claim that this is an unfair test. We have been taught that our place is within four walls and only within the last half century have we come to see that the development of God-given qualities is the duty of women as well as men. It is therefore too much to ask that a majority of women should demand this burden from which we have been so long exempt.

The extension of the suffrage to classes in the past has been not from their demand but for their protection and elevation and the vindication of the principles of our Republic.

Our country early learned the lesson that strength and greatness lies not in the repudiation of burdens, but in willing and loyal burden bearing.

They say that voting is a masculine prerogative, fierce and turbulent; that influence is quiet and womanly; but we believe that the straightforward, dignified, responsible, effective way is the way of the ballot box, while the way of influence is secret, intricate, seductive, and dangerous. To prove this we have but to compare the history of Old World countries where women ruled their monarchs in secret with that of countries where women stood side by side with men, equal in responsibility and in authority.

They say that women do not know enough to vote, but we answer, we can learn. We are ready now to take our test of citizenship on the same terms as men. There never was a time in the history of the world when the mass of women was so intelligent and so right living as are the women of America to-day.

They say what would women do with the great questions before the country? We answer, one of the greatest economic questions of the hour is housing and feeding the people, the care of little children

and the unfortunate. Questions with which women by nature and training are better fitted to deal than men.

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A few days ago I had a letter from a Member of Congress who frankly admitted that he saw no fault in the arguments for woman suffrage. Personally, he said, he "would be pleased to see the women of the country share in all the political rights enjoyed by men," but he said there was not sufficient demand for it. He said, "I do not mean a passive sentiment. It must be an active force, and it must assert its demands." When I reread that sentence I wondered if it were a challenge to American suffragists to forge ahead of our English sisters in strenuous campaigning. However, in the English Parliament last week Hon. Herbert Gladstone publicly declared that he found no fault with this just cause, but declared that the women had not sufficiently emphasized their desire for suffrage. This was the objection in a country where 6,000 meetings on the subject were held in a year, with thousands upon thousands petitioning and hundreds of women gladly going to prison to advance the cause.

We are left to wonder just what is the test, what the arbitrary standard, that members of State legislatures or Congress have set for us to sufficiently impress them.

This seems to me the most unfair of all the objections to the enfranchisement of women. It implies an admission of the justice and righteousness of the plea. If it were not right in itself and did not harmonize with the ideals of our Government, numbers should not be an argument for it.

If the problem were once definitely stated to us, and we could know the numerical standard set for us, there would be greater incentive to measure up. As it is, how can we know when our proof is sufficient? How can we prove the vast number of women who to-day most earnestly desire enfranchisement?

There is absolutely only one way to find out, and that is to take a vote. The ballot is the only medium provided to take authoritative census of opinions on any subject. Knowledge gained by this method would be official and definite. Without an official vote one may guess one way and another another, but neither can be certain. So, even if it were conceded that the women who wish to be enfranchised must wait for the majority of those who do not, I claim that it is unfair, un-American, undemocratic, to prejudge the question; to decide against us, as has been done in the past, without definite knowledge and with insufficient evidence.

But now, with this orderly and official method withheld, what is next best way to demonstrate the number of women whose self-respect demands promotion from the classes of citizens deemed incapable of self-government? Is it by petition? If so, our cause should have received great consideration, for I doubt if the United States Congress or the majority of our State legislatures have received more or greater petitions on any other subject.

Last year the women of Chicago worked to secure municipal suffrage as a provision in the new charter which was being framed. One hundred of the most prominent organizations in that one city joined in this movement.

One of our working committees circulated petitions, and those few women, working a few days each, secured enough signatures to cover solidly nearly a hundred yards of muslin. We could have carpeted and papered the room of the convention. But no one seemed greatly impressed by the significance of the mathematics of

that exhibit, nor computed, as they might have done, the number of Chicago citizens who would thus have spoken if the canvass could have been thorough. As it was, a round of laughter filled the room as these yards of signatures were unrolled and no member seemed to value this demonstration of silent entreaty.

I believe you will agree with me that while the sacred right of petition has not been repealed that it is a defunct expedient. Without a vote then, and with the inadequacy of the petition, how may women speak on this question?

I believe the best indication of the attitude of women in this matter is to be found in organizations of women. There are great national bodies of women, with hundreds of thousands of members, which have indorsed woman suffrage. The attitude of organized women is fairly representative of millions of women who can not actively belong to such organizations. Every race, every class, speaks through its leaders. You do not demand that all farmers, all miners, all shipbuilders, all negroes, nor all Indians shall ask for legislation, but you take the attitude of the leaders as significant of general sentiment.

Without a vote on this question, without even the opportunity to sign a petition, without the opportunity to speak through organizations of women, there are multitudes of isolated women in our country who desire the dignity of citizenship and the protection and power of the ballot. They are voiceless by necessity. How unjust to count them with the opposition or the indifferent and to ignore them. Thousands are too busy doing the factory work, the farm work, the pioneer work, too busy taking care of their families, or too poor to make pilgrimages to legislatures to ask for the ballot.

But they want it. I know many hundreds of farmer women, for instance, the very sinew of patriotic and intelligent womanhood, who smart under the disgrace of disfranchisement. They have no way to express their wishes for the ballot. They look to their leaders to secure it for them. And again, in the resolutions of organized women the mathematician can deduce only argument for the suffragists, for while many national bodies of women have declared for suffrage, not one organization of national proportions has organized against it.

Moreover, it can not be possible that the women of Colorado, Utah, Idaho, and Wyoming are different from the rest of American women. They have come from every State, and while the proportion of women in those States who actively worked for the ballot was only about the same as usually ask for it, yet statistics show that as great a proportion of women as men have exercised the privilege since it has been granted them, showing the latent sentiment that must have previously existed.

Again the solicitude of the opposition for the women who do not want the ballot seems rather superfluous when we remember that granting the right would inflict no compulsion. If she did not wish to exercise the privilege, she could join the company of several millions of men who every election fail to cast their votes. It is not the indifferent women who would be oppressed. The oppression is felt only by the women who wish to vote and can not.

Under all circumstances, a larger proportion of women have asked for this right than you could reasonably expect. It must be remem-

bered that few people, comparatively, of either sex, have much initiative in governmental matters. Women are not more passive in this movement than the majority of men are in governmental changes. All are apt to accept conditions as they find them, even though they inwardly protest. However, I suppose it is really true that our great weakness in this struggle has resulted from what has traditionally been counted our greatest virtue—patience.

I sometimes think we should have the clearness of vision of the little boy whose mother had been giving him a disquisition on the humanities and fine conduct. Then she began to catechise him and said, "Now, Johnnie, if you are always kind and patient and forgiving, what will your playmates think?" and she was surprised when her practical young hopeful said, "Why, they'd think they could lick me all the time."

Gentlemen, we have borne unjust burdens patiently. The women of this country have not fomented rebellions, trundled cannon, nor talked treason. They have taken their share in the hard, serious work of the nation, helping to build up a better civilization. And they have reasoned away every objection to their enfranchisement except those grounded on obstinacy or prejudice. They have faith to believe that these degrading limitations shall soon be removed and that justice once more may triumph in this nation dedicated to justice and equality.

STATEMENT OF MRS. IDA HUSTED HARPER.

Mrs. HARPER. Gentlemen and members of the committee: Since the representatives of the National Woman Suffrage Association last appeared before this committee, two years ago, two nations of Europe have conferred the complete franchise on their women and one has practically granted municipal suffrage. Finland in 1906 enfranchised all women on exactly the same terms as men and made them eligible to all offices including the parliamentary. This measure was the result of great deliberation and careful procedure, decided upon by a carefully selected commission, passed by all the four chambers of the Diet with but one dissenting voice, and signed by the Czar. About 300,000 women were thus enfranchised. At the next election all parties put women on their tickets and one year ago this month 19 were elected to Parliament and are now sitting in that body. At this election fully as large a proportion of women as of men voted, and in some districts it was larger.

The women of Norway, since 1901, have possessed the complete municipal franchise and eligibility to the city councils. Several hundred have been elected as aldermen, 6 in Christiana at the recent election. A very large number use the franchise; in some places 90 per cent. In 1907 the full parliamentary suffrage was conferred with a tax-paying qualification so small that even domestic servants can meet it, and the wife may vote on the husband's income. About 350,000 women thus became electors.

At last accounts the Parliament of Denmark had given the third reading to a bill for the municipal franchise for women, and it is doubtless now a law. In Sweden the movement for woman suffrage is so far advanced as to insure its success within the next year or two. In the Netherlands, the full franchise for women has been placed in

the proposed new constitution, and only the overthrow of the present Government will prevent its adoption. Women of Great Britain have had municipal suffrage for nearly forty years, and within a few months the Parliament has made them eligible as mayors, as town and county councilors, and as presidents of the councils. This bill passed the conservative House of Lords by a vote of 73 to 46, while there were only 15 votes against it in the House of Commons. At the first election thereafter 7 cities elected women to their councils. Last Friday a bill to give women the complete parliamentary franchise passed its second reading in the House of Commons by a vote of 271 to 92—three in favor to one opposed, and 420 members are pledged to vote for some kind of suffrage bill.

These statements illustrate the actual political progress of women in European countries within the past two years, and many steps forward in others might be cited if time permitted.

During this period what have been the concrete gains for women in the United States, the nation alleged to give them more rights than any on the face of the earth? The answer can be given in a very few words: "There has not been one." How many political privileges have been secured within the past ten years? Not one. There is the shameful record in all its nakedness, and let those who boast of this glorious Republic make the best of it. While the legislative bodies of most of the progressive nations throughout the world are moving forward toward the political recognition of women, those of the United States are standing stock-still, just where they were at the beginning of their existence, and resisting every effort to move them from their medieval position.

When we women go abroad to our great international meetings we meet there the delegates from New Zealand, who have been fully enfranchised since 1893; from Australia, who have had the complete suffrage and the right to sit in Parliament for the past six years, ever since their States were federated into a commonwealth; from Finland and Norway, with their full political rights; from Great Britain, with the municipal vote and rights to office; from Denmark, and from our neighbor, Canada, with the municipal franchise; yes, and even the women of Russia, who tell us that representatives in the douma of every political party are in favor of giving votes to women. What are we to answer to the amazed inquiries why we of the United States have no voice in a Government whose greatest pride is that of being founded on individual representation? Shall we say it is because our men are not as just and generous as those of other nations? Or shall we take the other horn of the dilemma and say it is because our women are not so capable of being trusted with it? No one can truthfully say it is because our women do not want it, for they have worked far longer and harder for it than have those of all these other countries combined.

This year the suffragists of the United States will observe the sixtieth anniversary of the first woman's rights convention ever held in all history, that one which met in Seneca Falls, N. Y., the home of Elizabeth Cady Stanton, in 1848. First among the rights which it demanded for women was that of suffrage. After three-score years' continuous agitation, education, and organization what are the meager results we face to-day? In one State, Kansas, women have a limited municipal franchise; in Iowa, Louisiana, Montana,

and the villages of New York a shred of taxpayers' suffrage; in about one-half of the States a partial school vote. Not in one have women the same voice in school affairs that men have, and in order to exercise what they do possess they must comply with all the formalities required of men to vote for every official up to President of the United States. In 4 out of 46 States—Wyoming, Colorado, Idaho, and Utah—women are fully enfranchised on exactly the same terms as men. All of these 4 States took this action within six years, from 1890 to 1896, and it looked as if the time had come when woman suffrage would sweep the western part of the country. No sooner had women begun to use their new privilege, however, than the word was passed to surrounding States not to make the fatal mistake of putting this power into the hands of women. Who passed this word? It is not necessary to speak definitely on this point to politicians.

And so, after two generations have passed, we, the descendants of those pioneers, find ourselves also at the feet of our rulers begging for what must be the acknowledged prerogative of citizenship in a republic and a democracy if these are anything but empty words. Our mothers and their mothers saw their claims ignored, while a million negro men, but yesterday plantation slaves, were endowed with this sacred privilege. We, their daughters, behold our prayers treated with contempt, while, not once but every year, a million men from the slums of the Old World walk out of the steerage of the ships to become enfranchised citizens and ultimately to vote against giving the suffrage to American-born women. And while we have stood aside and listened to the grave discussion as to whether women would really uplift and purify the ballot, we have seen the Government rounding up the blanketed Indians from the reservations, forcing this zealously guarded ballot upon them and spending thousands of dollars to teach them how to use it. Is it strange if sometimes the unreasoning, illogical female mind wonders whether women would have had to wait all these years if their ballots could have been classed as purchasable commodities? But even with the welcome of the Indian into the political fold, feathers, war whoop, and tomahawk, our humilitaion was not complete, but the Government must reach out and confer the carefully treasured franchise upon the Porto Rican and Filipino men, the great mass of whom had not the slightest conception of its meaning. And on the consecrated floor of Congress, where no woman's foot shall tread, there sits a Representative of Filipino men who can not speak the English language, with the promise that a Porto Rican brother shall soon have a place by his side.

It is not surprising that the forefathers excluded women from the electorate, for they also excluded them from everything else, but the reasons that obtained then no longer exist. All the old objections have been swept into oblivion. Women are not now regarded by the law as chattels or held as minors after they are of legal age. Once prevented by statute from holding property, they now pay annual taxes of billions of dollars. From being looked upon merely as consumers and occupied wholly in unremunerated labor, they have become an army of producers, and 5,000,000 of them are engaged in occupations outside the home. For many years it was argued that women should not vote because they could not take part in war,

serve as police, or help put out fires. Nowadays the taxpayers provide a fire department, and the waiting list of men anxious to get on the police force does not seem likely very soon to need a reenforcement of women. There appears to be a great sufficiency of men for both the fire and police departments, willing and glad to serve their country in this capacity, and their number would not be any less if women could vote. There must be other factors in war besides those who stand up and shoot each other; there must be the large corps of nurses on the scene of action, and of those who stay behind to prepare and forward the supplies; and especially a vast army who remain at home and look after the households and the business. Women do their full share in all these capacities, and, what is beyond everything else, they bear and rear the soldiers, and what kind of war would it be if there were not any soldiers? Besides, there is no provision in any election law that the voter must be able to join the army. If there were, the most of those who will not let women vote because they can not fight would have to enter the ranks of the disfranchised.

There used to be a stereotyped objection that women were not mentally competent to vote. The logical and reasoning male mind never seemed to see any incongruity between this argument and the enfranchisement of the negroes, the immigrants, and the Indians; but let that pass, for it also is now obsolete. High schools throughout the country are graduating nearly three times as many girls as boys. There are at present about 40,000 women in the United States holding college degrees. Fully that number are now studying in the colleges, and they are ranking so high in scholarship and taking so many honors that some of the institutions are "segregating" them into classes by themselves, so that the feelings of the male students shall not be hurt. Although there are nearly 2,000,000 more men than women in the United States, women already form considerably more than one-third of the entire student body, and their percentage of increase is steadily gaining over that of men. In a few decades one-half of all the college graduates in the country will be women. There are about 3,500 women ministers, over 1,000 lawyers, nearly 7,500 physicians.

It is perhaps not necessary to go further into statistics to prove that women have minds. This is now very generally conceded. In olden times men just as wise in their generation as the men of to-day are in theirs gravely argued that women had no souls. We have never been able to disprove that statement, but perhaps there is not a very close connection between souls and suffrage. The only point we wish to make is that everything in the shape of an argument against woman suffrage has been relegated to limbo, where it belongs, and that no class of citizens ever was enfranchised who were so well equipped with all the qualities desirable for an electorate as are the women of to-day. But the opponents have now made a last stand with their backs against the wall. When we ask for it now they fire off a whole volley of blank cartridges in a single sentence, "Women don't want it." "But we do, or we wouldn't be working ourselves to death for it," we answer. "We maintain a large organization and raise many thousands of dollars every year in order to obtain it, and our leaders are among the ablest women the age has produced." "O, yes; that may

be true, but the majority of women do not want it. Go and convert your own sex."

Here then is an idea: It is the policy of the Government not to confer the franchise on any class of citizens until the majority of them demand it. So we study the history of the various extensions of the suffrage; first during the colonial period; again in the early days of the Federal Government when the workingmen were enfranchised; after the civil war when the great mass of negro men was brought into the electorate; down to the latest examples where the Indians were compelled to give up their tribal relations and become voting citizens, and the Porto Ricans and Filipinos were received with open arms. But in this study the undeniable fact is developed that in not one single instance did a majority or even a considerable minority ask to come into the voting body. Indeed with the exception of the workingmen there was no demand at all, but each class was enfranchised because the leaders of one party or the other saw a political advantage to be gained by it. Thus this last excuse for not enfranchising women falls to the ground as utterly discredited as all that preceded it.

But no matter how fallacious the opposition, we have to meet it; and so short a time ago when a commission was appointed to prepare a new charter for Chicago, the women of that wretchedly governed city determined to be included in the suffrage clause of the charter. Knowing that they would have to encounter this hackneyed objection that the women do not want it, the Suffrage Association called others to its assistance and at the hearing granted by the charter commission it was addressed by the official representatives of a great number of organizations comprising 86,000 women, the Federation of Clubs, W. C. T. U., Lutheran Women's League, Catholic Women's Society, Jewish Council of Women, mothers' clubs, women's trade unions, Chicago University women's societies, associations for every good purpose, and they presented a petition 225 feet long. The meeting was thoroughly representative of Chicago women and of their desire for a vote on municipal questions, and yet the commission refused to incorporate woman suffrage in the charter. When this finally was submitted, 320,000 out of the 500,000 qualified voters failed to go to the polls. Think of it! Nearly 100,000 of Chicago's best citizens pleading for a vote and refused, and almost three-fourths of those entitled to vote declining to do so. And almost at the very moment when a Chicago commission perpetrates this outrage on women, the Parliament of Great Britain, where they have exercised the municipal suffrage for forty years, by an overwhelming majority, makes them eligible for mayors and aldermen.

A convention is now in session in Michigan to frame a new constitution. The women of that State have been making herculean efforts to secure a clause for woman suffrage, and last month a hearing was granted. As many and as varied associations sent their representatives as at Chicago; the organized womanhood of the State asked for this measure. The committee said it was the most dignified, logical, and able hearing that had been held. Doctor Shaw, president of the national association, was among the speakers. The governor of the State was present and almost the entire constitutional convention, filling the assembly room of the legislature. At the close of her address they crowded around her and said, "If the vote could be

taken now, the measure would bec arried unanimously." Two weeks later it was defeated by almost a two-thirds majority of the convention. Why this change of heart? Not because the delegates had heard from the women of Michigan that they did not want the suffrage; but because they had heard from the men who did not want them to have it.

You often read in newspaper editorials of a "large and influential association of women" to oppose the granting of suffrage. After all these years this "large and influential body" is organized in just two States. It has a society in Boston, one in Brooklyn, and one in Buffalo. They have never held a convention and never a meeting that could not be accommodated in the parlor of a member. If the entire list of names were presented here you would not recognize more than two or three of them, perhaps not so many. They are women known only in their own social circle. In the Woman Suffrage Association you will find the names of all the women of the country most prominent in education, philanthropy, civics, and the reform and progressive movements of the day. Of the women who have expressed themselves at all on the subject the immense majority have declared in favor of the suffrage.

No one has a right to interpret for those who have not spoken. Reforms are never carried forward by the masses, but by the leaders. This we do know, that in every State and every county where the women have the franchise they use it in as large a proportion as the men, and this is the strongest proof which can be offered that they do want it whether they are aware of this fact or not before they get it. But if men are not satisfied with this proof then what will they have? Do they desire that our women shall leave their homes en masse and demonstrate their wishes after the manner that is now being employed in Great Britain? We are already seeing indications of these methods in New York City. The movement for woman suffrage will not always remain in the wise and conservative control of those who now have it in charge. When the fearless and aggressive women of the present day look back over sixty years of dignified womanly effort and see that it has been rewarded with an almost continuous series of failures, is it not reasonable that they should change the tactics? Those who oppose the English method should come forward with some new suggestions.

Examine for a moment the present situation. Legislatures will no longer submit this question to the voters. It has been nearly ten years since the women have been able to secure from a legislature the submission of a woman-suffrage amendment. The reason for this was frankly stated a short time ago when those of California appealed to a member to know why he voted against the submission in that State: "Because it is easier to defeat you here than it would be at an election!" Here then is the status of those who are trying to secure the suffrage for women: The legislatures themselves can not grant it and they will not submit the question to the electorate, the only power that can bestow it. Was ever a body of citizens in as helpless a position? It is this anomalous and outrageous situation which brings us to you, the sole tribunal to whom we can look for relief. There are but two ways in which the women of the United States can ever be enfranchised—through a majority vote of

the electors of each State or through an amendment to the National Constitution. The legislatures will not submit it to the electors. All the talk about their being willing to do so when enough women ask for it is mere rubbish. There will always be a sufficient influence behind them which is already enfranchised to compel them not to do it.

But if they should submit it, then think of the electorate we must face. Would you be willing to trust the question of your own political liberty to their mercies? You would find yourselves disfranchised at the first election. The whites would take away the suffrages of the blacks if they could, and vice versa. The rich would disfranchise the poor and the latter would joyfully do the same for the rich. We have seen in France what the unbelievers would do for the church, and doubtless there are church people and fanatics in this country who would rejoice to take away the voting privileges of those who disapprove their policies; while in each of the above classes there is an element opposed to giving political rights to women. It is a very great defect in our Constitution which invests one body of citizens with the power to hold another body in a state of perpetual disfranchisement. There is no such provision in the constitution of any other country in the world. The only reparation that can be made for this mistake is to amend our Constitution. If Congress shall continue to refuse to women this only just and feasible method of redress for the great wrong which has been done them, then indeed our case is hopeless; but that august assemblage may rest assured that the great body of educated, tax-paying, wage-earning women now coming upon the scene will not bear this indignity as patiently as have those of the present and past generations.

How does Congress stand upon this question? During the year just past there was scarcely a parliament in Europe that did not discuss woman suffrage in some of its phases. It has been eighteen years since it was discussed in the Congress of the United States, and then it was upon the admission of Wyoming, in which politics played so large a part that the merits of the suffrage question were greatly obscured.

Eighteen years since this matter which so vitally concerns one-half the people has even been considered in the national legislative body. In Great Britian the women know precisely how every member stands upon it. In this country we might as well try to solve the riddle of the Sphinx. There the platforms at woman-suffrage meetings are crowded with members of Parliament. Here we can scarcely persuade one solitary Member of Congress to shed the light of his countenance.

During these eighteen years the leaders of the movement have addressed committees of Senate and House nine times. It is sixteen years since we have had a favorable report from the Senate committee. It is twelve years since we have had one of any kind, and the last was merely a copy of an adverse report that had first begun to do duty in 1882. The last report from the House Judiciary Committee was made in 1894, and refused the petition of the women. The last time I myself addressed the Senate committee we had with us our dear leader, who had been coming here to the Capitol for almost forty years to beg for women that citizen's right which is so freely given to the lowest of men without the asking, and one member of the com-

mittee said, "Miss Anthony, I promise you this, you shall have a report." That was four years ago, but we waited in vain for the pleasure, or pain, of reading that report. "What is needed more than anything else," Miss Anthony used to say, "is a watching committee, to see that we get a report." When the militant suffragists, who are now on the way, take this work out of the hands of those who have been coming here in vain for so many years, they will probably organize a "lobby" with all that the name implies, and perhaps it will know how to get some expression from these committees.

But before that day arrives we can not but wish that we ourselves were able to present this question in such a way that you would consider it of enough importance for you to make a report of some nature upon it. You are the chosen representatives of one-half of this great nation, selected because of your wisdom, judgment, and commanding ability. If you can not grant our request to recommend action by Congress, we long to have you tell us at least where we have made mistakes, what is the matter with us that the men of our country will not place the confidence in us that the men of other countries place in their women, and what we can do to make ourselves worthy of the great gift we ask. But if you are ready to say to the Congress that we have proved the right of women to the suffrage and their fitness for it, and to recommend that we may carry our case to the legislatures of the States, then indeed we shall go forth with fresh courage and strong hope to win what we believe will help women to redeem the world.

STATEMENT OF MRS. ELLA HAWLEY CROSSETT, PRESIDENT OF THE NEW YORK STATE WOMAN SUFFRAGE ASSOCIATION.

Mrs. CROSSETT. Mr. Chairman and members of the committee: We think that you have arrived at the conclusion before this, that in a republican form of government all the people should have a voice in the Government. Yet legislators make as an excuse to further extending the suffrage, that the women do not want it.

I have been an officer in the New York State Suffrage Association for the past sixteen years, consequently ought to know something of the progress that has been made in our organization and also in others that were not started for the purpose of pushing the suffrage question but are doing so now.

Sixty years ago the first meeting ever called for the purpose of advancing the position of women was called in our State; women from many different organizations will help us celebrate the event this year, and, Mr. Chairman and members of the committee, we think that you should at least help us celebrate, after sixty years of peaceful agitation, by reporting favorably to our legislatures the sixteenth amendment to the United States Constitution.

In the seventies a constitutional convention was held in our State. George William Curtis gave one of the best addresses in favor of woman suffrage that has ever been presented, yet the vote to submit the question had very few supporters; in 1894 we carried to the constitutional convention petitions representing over 600,000 men and women. We lacked only a few votes of carrying the measure in the convention. When you think of putting a measure like this before the voters of the State, you must know that it would be no small

undertaking. We think that we should receive as much consideration as other classes in the Republic that have been enfranchised and the question be put to the legislatures to decide.

Women have had school suffrage as a general law of the State since 1882. Women may vote on tax questions in between eight and nine hundred villages of the State and in 20 of the 38 third-class cities, so we are asking no radical measure in New York State, for women are using their powers quite generally and they have been of great service in the communities in which they live.

At the hearing given on February 19 at Albany on the question to amend the State constitution by striking the word "male" from the State constitution, we had speakers that brought resolutions in support of the measure from the State Grange with 77,000 members; the Woman's Christian Temperance Union, 26,000 members; the Self-Supporting League of Woman Suffragists of New York City, 14,000 members; the Federation of Labor, representing 250,000 voters; New York City Federation of Women's Clubs, 20,000. The presidents from several large philanthropic organizations spoke also in favor of the measure. Never has there been such cooperation; the question is being discussed in many places, and the women of this country can not understand why Congress does not take up the measure. We have a right to expect it, and we trust that you will submit the measure soon to the legislatures.

STATEMENT OF MISS LAURA CLAY.

Miss CLAY. Gentlemen, in speaking for our petition for a submission of a sixteenth amendment what I say will be simply something to show why we believe the people are ready for the extension of the franchise to women and should be given this means to imprint their convictions upon the Constitution.

It is reported that in a recent interview with a delegation of equal suffragists a very distinguished statesman of New York said to them, "The settlement of this question depends finally upon the women." I will remark first, therefore, upon how the women are speaking for themselves.

More petitions have been made by women for suffrage than have ever been made before by any class seeking to be admitted to the electorate. They have given every proof that if they possessed the ballot they would use it dutifully in expressing the womanly view on the vast and varied number of public questions which are brought before the voters. We have 4 States—Wyoming, Colorado, Utah, and Idaho—where women vote; and the records prove that they vote as generally as the men do. There is a long list of associations, composed of women or of women and men, outside of the suffrage associations proper, which have endorsed the right of suffrage for women. The call of their names will show the widely varied interests of those they represent. Among them are the National Women's Single Tax League, National W. C. T. U., International Women's Union Label League, National Purity Conference, National Free Baptist Woman's Missionary Society, United Textile Workers of America, Ladies of the Modern Maccabees, Ladies of the Maccabees of the World, National Council of Women, Nurses Association of the Pacific Coast, Native Daughters of the Golden West, Women

Workers of the Middle West, International Council of Women (representing 20 countries and upward of 6,000,000 of members), and many others. Three is but one of which I know that opposes it the Association Opposed to the Extension of Suffrage to Women.

And this association is not opposed in such a radical manner as at first sight appears, for the fundamental principle of the woman suffragists is the right of women to have an equal voice with men in deciding the conditions and laws under which both live. If there should occur such a change in governmental methods as that, something should be substituted for the ballot to express that right for men, then the woman suffragists would simultaneously change their demand and ask for the new mode of expressing an opinion on equal terms, without in the least affecting the essential nature of our present demand. Now, though the Association Opposed to the Extension of Suffrage to Women nominally set themselves in opposition, really in their way they also are asserting our underlying principle, because they are organized to express their opinion on one question of public interest, and do not disclaim a right to act in the same way upon every other public question. In claiming these rights they agree with us; it is only in method they disagree. They prefer to form an association, collect funds, and pay salaries to secretaries and others to distribute literature and in such ways to bring to bear their influence; a costly method and one not within the means of the majority of women. The suffragists prefer to use the ballot, which is the established method of exercising choice of opinion, is open to the poorest and has its machinery already paid for out of the taxes levied upon women as well as men. Intelligent women of our day are informed, and most often feel a personal responsibility in some degree, on all public matters; and perhaps without calling themselves suffragists they do maintain the fundamental principle of suffragists, and are now, as shown by their petitions and other public expressions of opinion, fully committed to the principle that women share in public interests, and ought to help in deciding them. Through all grades of legislative bodies, from city councils, where women petition for police matrons or street-cleaning ordinances, to the National Congress, where they petition for child-labor laws, pure-food bills or interstate-commerce regulations, the desire of women to be heard in public affairs is constantly brought into evidence. The toil, expense, and humiliation which public-spirited women thus endure in their enforced attitude of perpetual petitioners for what they believe is for the good of the people, is converting hosts to desire the direct, easy, and dignified means advocated by the suffragists to attain the same ends. The demand for ballot is growing among women as surely as their interest in questions affected by law is growing.

Just as among women the Association Opposed to the Extension of Suffrage to Women constitutes the only definite opposition to be found against equal suffrage, while other associations, representing hundreds of thousands of women engaged in philanthropies and intellectual and industrial pursuits have indorsed it, so it is among men. In the 4 States where women have the franchise it has been given by the votes of men; and in many other States constitutional amendments, though defeated so far at the polls, still have received affirmative votes from large minorities. Again, many associations, organized

for a large variety of social, industrial, and reform objects, officially indorse woman suffrage. Just as there is only one woman's association opposed to woman suffrage, though not very consistently, so there is but one among men avowedly opposed to it, with the difference that that one is thoroughly consistent. The organized liquor traffic is, I believe, the only association which in its newspaper organs, its public acts, and its unvarying political attitude, really embodies that antagonism to the fundamental principle of woman suffrage which goes deeper than aversion to the mere method by which that principle shall be put into operation. The saloons and the dens and dives which are too often allied with them know that self-respecting and thoughtful womanhood is a more dangerous enemy to their business than prohibitory laws on statute books; and so they always oppose the right of women to any voice in the Government under which they live. Their opposition has defeated equal suffrage amendments in several States, as the suffragists know to their cost. The liquor forces want nothing which leads women to think, and fear their influence upon law. Many strong associations of men value the intelligence of women, and desire to enlist it in their own behalf. Educators see that suffrage for women would help the schools, temperance men see that it is what the liquor interest most fears, labor men admit that it is necessary to secure and maintain the best wages for themselves as well as women; and so all these and many others indorse suffrage for women.

There is not much in these practical hopes of benefiting themselves to flatter the sentimental theory that men are only waiting to find out that women want the ballot to give it to them; but there is much to rejoice the philosophy which holds that the union of the interests of men and women is so vital that it is impossible ever to separate them, a philosophy whose outcome is likely to speed the day when woman suffrage will be a very live issue for party consideration. When extensive bodies of men possessing votes apprehend that their own interests demand the right of suffrage in the hands of women, it follows that they will quickly take measures to give it to them. Our allies, men whose interests are wrapped up with ours, are increasing so greatly in numbers that already the time seems drawing near when one or the other of the dominant parties will declare itself for its own benefit on the side of this last great enlargement of the electorate. Woman suffrage is bound to come, perhaps is bound to come soon; and the party which soonest declares itself in its favor must benefit most from the votes of that large class of women whose political opinions are not yet crystallized on party lines, or whose minds correspond to those of the independent voters among men. Gratitude will be a strong attractive power. We believe the time is not far off when our people will desire to express themselves on this question, and the submission of such an amendment to the National Constitution as we petition for will give their legislatures an opportunity to do so in the manner in accordance with the national precedents.

STATEMENT OF MRS. CARRIE CHAPMAN CATT, PRESIDENT INTERNATIONAL WOMAN SUFFRAGE ALLIANCE.

Mrs. CATT. Gentlemen and members of the committee, I can only repeat some of the things which have already been said. The conditions under which the right of suffrage can be granted to

women in the United States, are harder than in any other nation in the world. We are the only nation where suffrage may not be granted by an act of Parliament, and that accounts, undoubtedly, for the great extension to suffrage that has been given to women in other lands. We have but two ways in which we can secure the suffrage; by amendment of State constitutions, or by amendment of the National Constitution. If we go to the legislatures to ask for suffrage there, what is the result? In my native State of Iowa, ever since I have known anything of public affairs, women have carried the question of woman suffrage to every legislature. They have carried petitions with them from all classes of the State; organizations have sprung up here and there to be discouraged after years of nonlegislative action; not because they believed in woman suffrage less, but because they could get nothing from the legislatures, and never has it been submitted to a vote of the State. In my adopted State of New York, we need not go further back than 1894, when 600,000 people sent petitions to the constitutional convention. So numerous were those petitions that it was necessary to carry them down the aisle of the convention hall upon a wheelbarrow, and when these were piled upon the desks of the secretaries, they were buried out of sight, and yet that convention did not submit the question. Since that time, thousands of women of New York have been going before the legislature asking submission of the question. We ask only the privilege of petitioning the people, who alone have the right to give us the suffrage, and yet we are not able to get our question before the legislature, for the committees invariably quash the petition within the closed doors of the committee room.

This year, upwards of half a million of people were represented in the hearing recently held in Albany, and possibly there will be the same reply there has been before. When now and then the question is submitted, what is the result? We must go before the rank and file of voters, and I ask you, gentlemen, what would be your feelings—you who come from the South, who feel a repugnance to the negro vote—how would you like your women folks to seek the suffrage from them? What chance do you think we shall have when we go to the city of New York to appeal to that great body of men who maintain the white slave traffic, bringing young and innocent females from all lands to replenish houses of prostitution? What chance have we when we go to the saloon keepers, the managers of a business which steals away men's reason? What chance have we when we appeal anywhere to prejudice? In the year 1890 I came to the first Congressional hearing I had ever heard, and since that time I have been present at every Congressional hearing but one. Never once in that eighteen years has there ever been a full attendance of the woman's suffrage committee. Never once have the 5 members whose only duty it is to consider our hearing and act upon it ever given our petition sufficieut respect to attend in a body and hear what we have to say; yet this committee stands between us and Congress to-day and we can only appeal to Congress through this committee. Gentlemen, I do not ask you to believe in woman suffrage, for we know you have no authority to grant it. We only ask you to be true democrats in a democratic government and give us the opportunity to try our cause before the only court which may have constitutional jurisdiction over it. We only ask you to bring

this question back to the Senate in order that we may thus appeal to our members; that we may ask them in turn to report this question to the legislatures. The thing we ask does not in any wise compromise you with your political party; it need not embarrass you with your constituents. It is only giving a cause the right of free speech and free petition.

When we observe that the women of other civilized lands are, one by one, intrusted with the right and privilege of suffrage for which women in this country have so long struggled in vain, it is with the deepest humiliation that we reflect upon the impossibility to get our question beyond the authority of a committee. We ask you, gentlemen, to give to us the opportunity of trying our cause with the legislatures upon a sixteenth amendment. We do not know that this legislature would grant the right we ask. We only know that legislators are supposedly more intelligent and more reasonable than the mass of constituents behind them. We have been coming here year after year for many years, and you must surely recognize that we are persons of fair intelligence, education, refinement, and self-respect. We ask you, you who should appreciate these qualities in women, to save us from the humiliation of being obliged to take our question to those who possess no refinement, education, or self-respect. Give us at least the opportunity of appealing to those who may justly be called our peers. Let us have the benefit at least of the simplest method by which we can secure the suffrage. Gentlemen, you may say the method we propose is not constitutional. It was the method by which the negro was enfranchised, and if that act was not constitutional then no election in the United States since that day has been constitutional and no Member of this Congress holds his rank legally and constitutionally, since negroes are numbered in every constituency. It is constitutional. It must be; and we only ask you to give to us the same benefit which was given to the negro. It is very little we ask of you, gentlemen. We have heard much of American chivalry and American fairness to women, and we may surely appeal to these qualities and ask you to do this thing in the interest of ordinary fair play. We ask you to extend to us this small favor because it is just and right that women who have been engaged in this movement for fifty years shall be permitted to present their petition and their arguments to the bodies, which alone can grant or deny their request. The right of petition is an honored and a sacred one in this country, and yet, owing to the peculiarity of constitutional law, it is a right which has never been possible to women suffragists; committees continually stand between them and the body they would petition. We urge that this time a report shall be returned to the Senate.

Miss SHAW. Mr. Chairman, I had intended to make a few closing remarks, but they would have been in the line of those just given by Mrs. Chapman Catt, and I join my prayer with that of the other petitioners that your committee will present to the Senate, that our bill may be discussed in that body, and we further ask the courtesy of this committee that 10,000 copies of this hearing may be printed.

Thereupon (at 11 o'clock and 55 minutes a. m.) the hearing was closed.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 410.

DECISIONS OF SUPREME COURT OF UNITED STATES IN MATTER OF EDWARD T. YOUNG, PETITIONER, AND IN CASE OF THOMAS F. HUNTER *v.* JAMES H. WOOD.

Mr. LONG presented the following

DECISION OF THE SUPREME COURT OF THE UNITED STATES IN THE MATTER OF EDWARD T. YOUNG, PETITIONER, ON PETITION FOR WRITS OF HABEAS CORPUS AND CERTIORARI, WITH THE DISSENTING OPINION BY JUDGE HARLAN, AND THE DECISION IN THE CASE OF THOMAS F. HUNTER, SHERIFF OF BUNCOMBE COUNTY, STATE OF NORTH CAROLINA, APPELLANT, AGAINST JAMES H. WOOD.

MARCH 27, 1908.—Ordered to be printed.

Supreme Court of the United States. No. 10, original.—October term, 1907. Ex parte: In the matter of Edward T. Young, petitioner. On petition for writs of habeas corpus and certiorari. March 23, 1908.

An original application was made to this court for leave to file a petition for writs of habeas corpus and certiorari in behalf of Edward T. Young, petitioner, as attorney-general of the State of Minnesota.

Leave was granted and a rule entered directing the United States marshal for the district of Minnesota, third division, who held the petitioner in his custody, to show cause why such petition should not be granted.

The marshal, upon the return of the order to show cause, justified his detention of the petitioner by virtue of an order of the circuit court of the United States for the district of Minnesota, which adjudged the petitioner guilty of contempt of that court and directed that he be fined the sum of $100, and that he should dismiss the mandamus proceedings brought by him in the name and in behalf of the State in the circuit court of the State, and that he should stand committed to the custody of the marshal until that order was obeyed. The case involves the validity of the order of the circuit court committing him for contempt.

The facts are these: The legislature of the State of Minnesota duly created a railroad and warehouse commission, and that commission on the 6th of September, 1906, made an order fixing the rates for the various railroad companies for the carriage of merchandise between stations in that State of the kind and classes specified in what is known as the "Western Classification." These rates materially re-

duced those then existing, and were by the order to take effect November 15, 1906. In obedience to the order the railroads filed and published the schedules of rates, which have ever since that time been carried out by the companies.

At the time of the making of the above order it was provided by the Revised Laws of Minnesota, 1905 (section 1987), that any common carrier who violated the provisions of that section or willfully suffered any such unlawful act or omission, when no specific penalty is imposed therefor, "if a natural person, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five hundred dollars, nor more than five thousand dollars for the first offense, and not less than five thousand dollars nor more than ten thousand dollars for each subsequent offense; and, if such carrier or warehouseman be a corporation, it shall forfeit to the State for the first offense not less than twenty-five hundred dollars nor more than five thousand dollars, and for each subsequent offense not less than five thousand dollars nor more than ten thousand dollars, to be recovered in a civil action."

This provision covered disobedience to the orders of the commission.

On the 4th of April, 1907, the legislature of the State of Minnesota passed an act fixing 2 cents a mile as the maximum passenger rate to be charged by railroads in Minnesota. (The rate had been theretofore 3 cents per mile.) The act was to take effect on the 1st of May, 1907, and was put into effect on that day by the railroad companies, and the same has been observed by them up to the present time. It was provided in the act that "any railroad company, or any officer, agent or representative thereof, who shall violate any provision of this act shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the State prison for a period not exceeding five (5) years, or both such fine and imprisonment."

On the 18th of April, 1907, the legislature passed an act (chapter 232 of the laws of that year), which established rates for the transportation of certain commodities (not included in the Western Classification) between stations in that State. The act divided the commodities to which it referred into seven classes, and set forth a schedule of maximum rates for each class when transported in carload lots and established the minimum weight which constituted a carload of each class.

Section 5 provided that it should not affect the power or authority of the railroad and warehouse commission, except that no duty should rest upon that commission to enforce any rates specifically fixed by the act or any other statute of the State. The section further provided generally that the orders made by the railroad and warehouse commission prescribing rates should be the exclusive legal maximum rates for the transportation of the commodities enumerated in the act between points within that State.

Section 6 directed that every railroad company in the State should adopt and publish and put into effect the rates specified in the statute, and that every officer, director, traffic manager or agent, or employee of such railroad company should cause the adoption, publication, and use by such railroad company of rates not exceeding those specified in the act; "and any officer, director, or such agent or employee of any such railroad company who violates any of the provisions of this sec-

tion, or who causes or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon a conviction thereof be punished by imprisonment in the county jail for a period not exceeding ninety days." The act was to take effect June 1, 1907.

The railroad companies did not obey the provisions of this act so far as concerned the adoption and publication of rates as specified therein.

On the 31st of May, 1907, the day before the act was to take effect, nine suits in equity were commenced in the circuit court of the United States for the district of Minnesota, third division, each suit being brought by stockholders of the particular railroad mentioned in the bill, and in each case the defendants named were the railroad company of which the complainants were, respectively, stockholders, and the members of the railroad and warehouse commission, and the attorney-general of the State, Edward T. Young, and individual defendants representing the shippers of freight upon the railroad.

The order punishing Mr. Young for contempt was made in the suit in which Charles E. Perkins, a citizen of the State of Iowa, and David C. Shepard, a citizen of the State of Minnesota, were complainants, and the Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, Edward T. Young, petitioner herein, and others, were parties defendant. All of the defendants, except the railway company, are citizens and residents of the State of Minnesota.

It was averred in the bill that the suit was not a collusive one to confer on the court jurisdiction of a case of which it could not otherwise have cognizance, but that the objects and purposes of the suit were to enjoin the railway company from publishing or adopting (or continuing to observe, if already adopted) the rates and tariffs prescribed and set forth in the two acts of the legislature above mentioned and in the orders of the railroad and warehouse commission, and also to enjoin the other defendants from attempting to enforce such provisions, or from instituting any action or proceeding against the defendant railway company, its officers, etc., on account of any violation thereof, for the reason that the said acts and orders were and each of them was violative of the Constitution of the United States.

The bill also alleged that the orders of the railroad commission of September 6, 1906, May 3, 1907, the passenger rate act of April 4, 1907, and the act of April 18, 1907, reducing the tariffs and charges which the railway company had therefore been permitted to make, were each and all of them unjust, unreasonable, and confiscatory, in that they each of them would, and will, if enforced, deprive complainants and the railway company of their property without due process of law, and deprive them and it of the equal protection of the laws, contrary to and in violation of the Constitution of the United States and the amendments thereof. It was also averred that the complainants had demanded of the president and managing directors of the railway company that they should cease obedience to the orders of the commission dated September 6, 1906, and May 3, 1907, and to the acts already mentioned, and that the rates

prescribed in such orders and acts should not be put into effect, and that the said corporation, its officers, and directors should institute proper suit or suits to prevent said rates (named in the orders and in the acts of the legislature) from continuing or becoming effective, as the case might be, and to have the same declared illegal; but the said corporation, its president, and directors had positively declined and refused to do so, not because they considered the rates a fair and just return upon the capital invested or that they would not be confiscatory, but because of the severity of the penalties provided for the violation of such acts and orders, and therefore they could not subject themselves to the ruinous consequences which would inevitably result from failure on their part to obey the said laws and orders, a result which no action by themselves, their stockholders, or directors could possibly prevent.

The bill further alleged that the orders of the commission of September, 1906, and May, 1907, and the acts of April 4, 1907, and April 18, 1907, were, in the penalties prescribed for their violation, so drastic that no owner or operator of a railway property could invoke the jurisdiction of any court to test the validity thereof, except at the risk of confiscation of its property, and the imprisonment for long terms in jails and penitentiaries of its officers, agents, and employees. For this reason the complainants alleged that the above-mentioned orders and acts, and each of them, denied to the defendant railway company and its stockholders, including the complainants, the equal protection of the laws, and deprived it and them of their property without due process of law, and that each of them was, for that reason, unconstitutional and void.

The bill also contained an averment that if the railway company should fail to continue to observe and keep in force or to observe and put in force the orders of the commission and the acts of April 4, 1907, and April 18, 1907, such failure might result in an action against the company or criminal proceedings against its officers, directors, agents, or employees, subjecting the company and such officers to an endless number of actions at law and criminal proceedings; that if the company should fail to obey the order of the commission or the acts of April 4, 1907, and April 18, 1907, the said Edward T. Young, as attorney-general of the State of Minnesota, would, as complainants were advised and believed, institute proceedings by mandamus or otherwise against the railway company, its officers, directors, agents, or employees, to enforce said orders and all the provisions thereof, and that he threatened and would take other proceedings against the company, its officers, etc., to the same end and for the same purpose, and that he would on such failure institute mandamus or other proceedings for the purpose of enforcing said acts and each thereof, and the provisions and penalties thereof. Appropriate relief by injunction against the action of the defendant Young and the railroad commission was asked for.

A temporary restraining order was made by the circuit court, which only restrained the railway company from publishing the rates as provided for in the act of April 18, 1897, and from reducing its tariffs to the figures set forth in that act; the court refusing for the present to interfere by injunction with regard to the orders of the commission and the act of April 4, 1907, as the railroads had already put them in operation, but it restrained Edward T. Young,

attorney-general, from taking any steps against the railroads to enforce the remedies or penalties specified in the act of April 18, 1907.

Copies of the bill and the restraining order were served, among others, upon the defendant Mr. Edward T. Young, attorney-general, who appeared specially and only for the purpose of moving to dismiss the bill as to him, on the ground that the court had no jurisdiction over him as attorney-general; and he averred that the State of Minnesota had not consented, and did not consent, to the commencement of this suit against him as attorney-general of the State, which suit was in truth and effect a suit against the said State of Minnesota, contrary to the eleventh amendment of the Constitution of the United States.

The attorney-general also filed a demurrer to the bill, on the same grounds stated in the motion to dismiss. The motion was denied and the demurrer overruled.

Thereupon, on the 23d of September, 1907, the court, after a hearing of all parties and taking proofs in regard to the issues involved, ordered a temporary injunction to issue against the railway company, restraining it, pending the final hearing of the cause, from putting into effect the tariffs, rates, or charges set forth in the act approved April 18, 1907. The court also enjoined the defendant, Young, as attorney-general of the State of Minnesota, pending the final hearing of the cause, from taking or instituting any action or proceeding to enforce the penalties and remedies specified in the act above mentioned, or to compel obedience to that act, or compliance therewith, or any part thereof.

As the court refused to grant any preliminary injunction restraining the enforcement of the rates fixed by the railroad and warehouse commission, or the passenger rates under the act of April 4, 1907, because the same had been accepted by the railroads and were in operation, the court stated that in omitting the granting of such preliminary injunction the necessity was obviated upon that hearing of determining whether the rates fixed by the commission, or the passenger rates together or singly, were confiscatory and did not afford reasonable compensation for the service rendered and a proper allowance for the property employed, and for those reasons that question had not been considered, but inasmuch as the rates fixed by the act of April 18, 1907, had not gone into force, the court observed: "It seems to me, [illegible] this evidence of the conditions before either of those new ra[illegible] ut i[illegible] o effect (that is, the order of the commission of Sep[illegible] 06, [illegible] the act of April 4, 1907), and the reductions mad[illegible] ate[illegible] t if there is added the reduction which [illegible] commodity act (April 18, [illegible] ceived by the companies [illegible] r the services performed, [illegible] perty invested. And I [illegible] junction should issue, in [illegible] t of April 18), talked of [illegible] ould be no preliminary [illegible] *the matter as to whether* [illegible] *which may be determined* [illegible]

[illegible] preliminary injunction the [illegible] junction, filed a petition for

an alternative writ of mandamus in one of the courts of the State, and obtained an order from that court September 24, 1907, directing the alternative writ to issue as prayed for in the petition. The writ was thereafter issued and served upon the Northern Pacific Railway Company, commanding the company, immediately after its receipt, "to adopt and publish and keep for public inspection, as provided by law, as the rates and charges to be made, demanded, and maintained by you for the transportation of freight between stations in the State of Minnesota of the kind, character, and class named and specified in chapter 232 of the session laws of the State of Minnesota for the year 1907, rates and charges which do not exceed those declared to be just and reasonable in and by the terms and provisions of said chapter 232 * * *."

Upon an affidavit showing these facts the United States circuit court ordered Mr. Young to show cause why he should not be punished as for a contempt for his misconduct in violating the temporary injunction issued by that court in the case therein pending.

Upon the return of this order the attorney-general filed his answer, in which he set up the same objections which he had made to the jurisdiction of the court in his motion to dismiss the bill, and in his demurrer; he disclaimed any intention to treat the court with disrespect in the commencement of the proceedings referred to, but believing that the decision of the court in the action, holding that it had jurisdiction to enjoin him as attorney-general from performing his discretionary official duties, was in conflict with the eleventh amendment of the Constitution of the United States, as the same has been interpreted and applied by the United States Supreme Court, he believed it to be his duty as such attorney-general to commence the mandamus proceedings for and in behalf of the State, and it was in this belief that the proceedings were commenced solely for the purpose of enforcing the law of the State of Minnesota. The order adjudging him in contempt was then made.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the court.

We recognize and appreciate to the fullest extent the very great importance of this case, not only to the parties now before the court, but also to the great mass of the citizens of this country, all of whom are interested in the practical working of the courts of justice throughout the land, both Federal and State, and in the proper exercise of the jurisdiction of the Federal courts, as limited and controlled by the Federal Constitution and the laws of Congress.

That there has been room for difference of opinion with regard to such limitations the reported cases in this court bear conclusive testimony. It can not be stated that the case before us is entirely free from any possible doubt nor that intelligent men may not differ as to the correct answer to the question we are called upon to decide.

The question of jurisdiction, whether of the circuit court or of this court, is frequently a delicate matter to deal with, and it is especially so in this case, where the material and most important objection to the jurisdiction of the circuit court is the assertion that the suit is in effect against one of the States of the Union. It is a question, however, which we are called upon, and which it is our duty, to

decide. Under these circumstances, the language of Chief Justice Marshall in Cohens *v.* Virginia, 6 Wheat., 264–404, is most apposite. In that case he said:

> It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary can not, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We can not pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we can not avoid them. All we can do is to exercise our best judgment and conscientiously perform our duty.

Coming to a consideration of the case, we find that the complainants in the suit commenced in the circuit court were stockholders in the Northern Pacific Railway Company, and the reason for commencing it and making the railroad company one of the parties defendant is sufficiently set forth in the bill. Davis &c. Co. *v.* Los Angeles, 189 U. S., 207, 220; Equity Rule 94, Supreme Court.

It is primarily asserted on the part of the petitioner that jurisdiction did not exist in the circuit court because there was not the requisite diversity of citizenship, and there was no question arising under the Constitution or laws of the United States to otherwise give jurisdiction to that court. There is no claim made here of jurisdiction on the ground of diversity of citizenship, and the claim, if made, would be unfounded in fact. If no other ground exists, then the order of the circuit court, assuming to punish petitioner for contempt, was an unlawful order, made by a court without jurisdiction. In such case this court, upon proper application, will discharge the person from imprisonment. *Ex parte Yarbrough*, 110 U. S., 651; *ex parte Fisk*, 113 U. S., 713; *in re Ayers*, 123 U. S., 443, 485. But an examination of the record before us shows that there are Federal questions in this case.

It is insisted by the petitioner that there is no Federal question presented under the fourteenth amendment, because there is no dispute as to the meaning of the Constitution where it provides that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and whatever dispute there may be in this case is one of fact simply, whether the freight or passenger rates as fixed by the legislature or by the railroad commission are so low as to be confiscatory, and that is not a Federal question.

Jurisdiction is given to the circuit court in suits involving the requisite amount, arising under the Constitution or laws of the United States (1 U. S. Comp. Stat., p. 508), and the question really to be determined under this objection is whether the acts of the legislature and the orders of the railroad commission, if enforced, would take property without due process of law, and although that question might incidentally involve a question of fact, its solution nevertheless is one which raises a Federal question. See Hastings *v.* Ames (C. C. A. 8th Circuit), 68 Fed., 726. The sufficiency of rates with reference to the Federal Constitution is a judicial question, and one over which Federal courts have jurisdiction by reason of its Federal nature. Chicago &c. R. R. Co. *v.* Minnesota, 134 U. S., 418;

Reagan *v.* Farmers' &c. Co., 154 U. S., 369–399; St. Louis &c. Co. *v.* Gill, 156 U. S., 649; Covington &c. Turnpike Road Company *v.* Sandford, 164 U. S., 578; Smyth *v.* Ames, 169 U. S., 466–522; Chicago &c. Railway Co. *v.* Tompkins, 176 U. S., 167, 172.

Another Federal question is the alleged unconstitutionality of these acts because of the enormous penalties denounced for their violation, which prevent the railway company, as alleged, or any of its servants or employees, from resorting to the courts for the purpose of determining the validity of such acts. The contention is urged by the complainants in the suit that the company is denied the equal protection of the laws and its property is liable to be taken without due process of law, because it is only allowed a hearing upon the claim of the unconstitutionality of the acts and orders in question, at the risk, if mistaken, of being subjected to such enormous penalties, resulting in the possible confiscation of its whole property, that rather than take such risks the company would obey the laws, although such obedience might also result in the end (though by a slower process) in such confiscation.

Still another Federal question is urged, growing out of the assertion that the laws are, by their necessary effect, an interference with and a regulation of interstate commerce, the grounds for which assertion it is not now necessary to enlarge upon. The question is not, at any rate, frivolous.

We conclude that the circuit court had jurisdiction in the case before it, because it involved the decision of Federal questions arising under the Constitution of the United States.

Coming to the inquiry regarding the alleged invalidity of these acts, we take up the contention that they are invalid on their face on account of the penalties. For disobedience to the freight act the officers, directors, agents, and employees of the company are made guilty of a misdemeanor, and upon conviction each may be punished by imprisonment in the county jail for a period not exceeding ninety days. Each violation would be a separate offense, and, therefore, might result in imprisonment of the various agents of the company who would dare disobey for a term of ninety days each for each offense. Disobedience to the passenger rate act renders the party guilty of a felony and subject to a fine not exceeding $5.000 or imprisonment in the State prison for a period not exceeding five years, or both fine and imprisonment. The sale of each ticket above the price permitted by the act would be a violation thereof. It would be difficult, if not impossible, for the company to obtain officers, agents, or employees willing to carry on its affairs except in obedience to the act and orders in question. The company itself would also, in case of disobedience, be liable to the immense fines provided for in violating orders of the commission. The company, in order to test the validity of the acts, must find some agent or employee to disobey them at the risk stated. The necessary effect and result of such legislation must be to preclude a resort to the courts (either State or Federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company. The observations upon a similar question made by Mr.

Justice Brewer in Cotting *v.* Kansas City Stock Yards Company, 183 U. S., 77, 99, 100, 102, are very apt. At page 100 he stated:

> Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appropriates all his property or subjects him to extravagant and unreasonable loss?

Again, at page 102, he says:

> It is doubtless true that the State may impose penalties, such as will tend to compel obedience to its mandates by all, individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.

The question was not decided in that case, as it went off on another ground. We have the same question now before us, only the penalties are more severe in the way of fines, to which is added, in the case of officers, agents, or employees of the company, the risk of imprisonment for years as a common felon. See also Mercantile Trust Co. *v.* Texas &c. Ry. Co., 51 Fed., 529–543; Louisville &c. R. R. Co. *v.* McChord, 103 Fed., 216–223; Consolidated Gas Co. *v.* Mayer, 146 Fed., 150–153. In McGahey *v.* Virginia, 135 U. S., 662–694, it was held that to provide a different remedy to enforce a contract which is unreasonable, and which imposes conditions not existing when the contract was made, was to offer no remedy, and when the remedy is so onerous and impracticable as to substantially give none at all the law is invalid, although what is termed a remedy is in fact given. See also Bronson *v.* Kinzie, 1 How., 311, 317; Seibert *v.* Lewis, 122 U. S., 284. If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. Chicago &c. Railway Co. *v.* Minnesota, 134 U. S., supra. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights.

It is urged that there is no principle upon which to base the claim that a person is entitled to disobey a statute at least once, for the purpose of testing its validity without subjecting himself to the penalties for disobedience provided by the statute in case it is valid. This is not an accurate statement of the case. Ordinarily a law creating offenses in the nature of misdemeanors or felonies relates to a subject over which the jurisdiction of the legislature is complete in any event. In the case, however, of the establishment of certain rates without any hearing, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the

investment (how much it is not now necessary to state), and an inquiry as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal. Now, to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior hearing having ever been given) only upon the condition that if unsuccessful he must suffer imprisonment and pay fines as provided in these acts, is, in effect, to close up all approaches to the courts, and thus prevent any hearing upon the question whether the rates as provided by the acts are not too low, and therefore invalid. The distinction is obvious between a case where the validity of the act depends upon the existence of a fact which can be determined only after investigation of a very complicated and technical character, and the ordinary case of a statute upon a subject requiring no such investigation and over which the jurisdiction of the legislature is complete in any event.

We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates. We also hold that the circuit court had jurisdiction under the cases already cited (and it was therefore its duty) to inquire whether the rates permitted by these acts or orders were too low and therefore confiscatory, and if so held, that the court then had jurisdiction to permanently enjoin the railroad company from putting them in force, and that it also had power, while the inquiry was pending, to grant a temporary injunction to the same effect.

Various affidavits were received upon the hearing before the court prior to the granting of the temporary injunction, and the hearing itself was, as appears from the opinion, full and deliberate, and the fact was found that the rates fixed by the commodity act, under the circumstances existing with reference to the passenger rate act and the orders of the commission, were not sufficient to be compensatory, and were in fact confiscatory, and the act was therefore unconstitutional. The injunction was thereupon granted with reference to the enforcement of the commodity act.

We have, therefore, upon this record the case of an unconstitutional act of the State legislature and an intention by the attorney-general of the State to endeavor to enforce its provisions, to the injury of the company, in compelling it, at great expense, to defend legal proceedings of a complicated and unusual character, and involving questions of vast importance to all employees and officers of the company, as well as to the company itself. The question that arises is whether there is a remedy that the parties interested may resort to, by going into a Federal court of equity, in a case involving a violation of the Federal Constitution, and obtaining a judicial investigation of the problem, and pending its solution obtain freedom from suits, civil or criminal, by a temporary injunction, and if the question be finally decided favorably to the contention of the company, a permanent injunction restraining all such actions or proceedings.

This inquiry necessitates an examination of the most material and important objection made to the jurisdiction of the circut court, the objection being that the suit is, in effect, one against the State of Min-

nesota, and that the injunction issued against the attorney-general illegally prohibits State action, either criminal or civil, to enforce obedience to the statutes of the State. This objection is to be considered with reference to the eleventh and fourteenth amendments to the Federal Constitution. The eleventh amendment prohibits the commencement or prosecution of any suit against one of the United States by citizens of another State or citizens or subjects of any foreign state. The fourteenth amendment provides that no State shall deprive any person of life, liberty, or property without due process of law, nor shall it deny to any person within its jurisdiction the equal protection of the laws.

The case before the circuit court proceeded upon the theory that the orders and acts heretofore mentioned would, if enforced, violate rights of the complainants protected by the latter amendment. We think that whatever the rights of complainants may be, they are largely founded upon that amendment, but a decision of this case does not require an examination or decision of the question whether its adoption in any way altered or limited the effect of the earlier amendment. We may assume that each exists in full force, and that we must give to the eleventh amendment all the effect it naturally would have, without cutting it down or rendering its meaning any more narrow than the language, fairly interpreted, would warrant. It applies to a suit brought against a State by one of its own citizens as well as to a suit brought by a citizen of another State. Hans *v.* Louisiana, 134 U. S., 1. It was adopted after the decision of this court in Chisholm *v.* Georgia, 2 Dall., 419 (A. D. 1793), where it was held that a State might be sued by a citizen of another State. Since that time there have been many cases decided in this court involving the eleventh amendment, among them being Osborn *v.* United States Bank, 9 Wheat., 738, 846, 857 (A. D. 1824), which held that the amendment applied only to those suits in which the State was a party on the record. In the subsequent case of Governor of Georgia *v.* Madrazo, 1 Pet., 110, 122, 123 (A. D. 1828), that holding was somewhat enlarged, and Chief Justice Marshall, delivering the opinion of the court, while citing Osborn *v.* United States Bank, supra, said that where the claim was made, as in the case then before the court, against the governor of Georgia as governor, and the demand was made upon him, not personally, but officially (for moneys in the treasury of the State and for slaves in possession of the State government), the State might be considered as the party on the record (page 123), and therefore the suit could not be maintained.

Davis *v.* Gray, 16 Wall., 203, 220, reiterates the rule of Osborn *v.* United States Bank, so far as concerns the right to enjoin a State officer from executing a State law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant.

In Virginia Coupon cases, 114 U. S., 270, 296 (Poindexter *v.* Greenhow), it was adjudged that a suit against a tax collector who had refused coupons in payment of taxes and, under color of a void law, was about to seize and sell the property of a taxpayer for nonpayment of his taxes, was a suit against him personally as a wrongdoer and not against the State.

Hagood *v.* Southern, 117 U. S., 52–67, decided that the bill was in substance a bill for the specific performance of a contract between

the complainants and the State of South Carolina, and, although the State was not in name made a party defendant, yet being the actual party to the alleged contract the performance of which was sought and the only party by whom it could be performed, the State was in effect a party to the suit, and it could not be maintained for that reason. The things required to be done by the actual defendants were the very things which when done would constitute a performance of the alleged contract by the State.

The cases upon the subject were reviewed, and it was held, In re Ayers, 123 U. S., 443, that a bill in equity brought against officers of a State, who, as individuals, have no personal interest in the subject-matter of the suit, and defend only as representing the State, where the relief prayed for, if done, would constitute a performance by the State of the alleged contract of the State, was a suit against the State (p. 504), following in this respect Hagood *v.* Southern, supra.

A suit of such a nature was simply an attempt to make the State itself, through its officers, perform its alleged contract, by directing those officers to do acts which constituted such performance. The State alone had any interest in the question, and a decree in favor of plaintiff would affect the treasury of the State.

On the other hand, United States *v.* Lee, 106 U. S., 196, determined that an individual in possession of real estate under the Government of the United States, which claimed to be its owner, was, nevertheless, properly sued by the plaintiff, as owner, to recover possession, and such suit was not one against the United States, although the individual in possession justified such possession under its authority. (See also Tindal *v.* Wesley, 167 U. S., 204, to the same effect.)

In Pennoyer *v.* McConnaughy, 140 U. S., 1, 9, a suit against land commissioners of the State was said not to be against the State, although the complainants sought to restrain the defendants, officials of the State, from violating, under an unconstitutional act, the complainant's contract with the State, and thereby working irreparable damage to the property rights of the complainants. Osborn *v.* United States Bank, supra, was cited, and it was stated:

> But the general doctrine of Osborn *v.* Bank of the United States, that the circuit courts of the United States will restrain a State officer from executing an unconstitutional statute of the State, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution and would work irreparable damage and injury to him, has never been departed from.

The same principle is decided in Scott *v.* Donald, 165 U. S., 58–67. And see Missouri, &c., *v.* Missouri Railroad Commissioners, 183 U. S., 53.

The cases above cited do not include one exactly like this under discussion. They serve to illustrate the principles upon which many cases have been decided. We have not cited all the cases, as we have not thought it necessary. But the injunction asked for in the Ayers case, 123 U. S. (supra), was to restrain the State officers from commencing suits under the act of May 12, 1887 (alleged to be unconstitutional), in the name of the State and brought to recover taxes for its use, on the ground that if such suits were commenced they would be a breach of a contract with the State. The injunction was declared illegal because the suit itself could not be entertained, as it was

one against the State to enforce its alleged contract. It was said, however, that if the court had power to entertain such a suit it would have power to grant the restraining order preventing the commencement of suits (p. 487). It was not stated that the suit or the injunction was necessarily confined to a case of a threatened direct trespass upon or injury to property.

Whether the commencement of a suit could ever be regarded as an actionable injury to another, equivalent in some cases to a trespass such as is set forth in some of the foregoing cases, has received attention in the rate cases, so called. Reagan *v.* Farmers' Loan & Trust Co., 154 U. S., 362 (a rate case), was a suit against the members of a railroad commission (created under an act of the State of Texas) and the attorney-general, all of whom were held suable, and that such suit was not one against the State. The commission was enjoined from enforcing the rates it had established under the act, and the attorney-general was enjoined from instituting suits to recover penalties for failing to conform to the rates fixed by the commission under such act. It is true the statute in that case creating the board provided that suit might be maintained by any dissatisfied railroad company, or other party in interest, in a court of competent jurisdiction in Travis County, Tex., against the commission as defendant. This court held that such language permitted a suit in the United States circuit court for the western district of Texas, which embraced Travis County, but it also held that, irrespective of that consent, the suit was not in effect a suit against the State (although the attorney-general was enjoined), and therefore not prohibited under the amendment. It was said in the opinion, which was delivered by Mr. Justice Brewer, that the suit could not in any fair sense be considered a suit against the State (p. 392), and the conclusion of the court was that the objection to the jurisdiction of the circuit court was not tenable, whether that jurisdiction was rested (p. 396) "upon the provisions of the statute or upon the general jurisdiction of the court existing by virtue of the statutes of Congress and the sanction of the Constitution of the United States." Each of these grounds is effective and both are of equal force. Union Pacific, &c., *v.* Mason City Company, 199 U. S., 160–166.

In Smyth *v.* Ames, 169 U. S. 466 (another rate case), it was again held that a suit against individuals, for the purpose of preventing them, as officers of the State, from enforcing, by the commencement of suits or by indictment, an unconstitutional enactment to the injury of the rights of the plaintiff, was not a suit against a State within the meaning of the amendment. At page 518, in answer to the objection that the suit was really against the State, it was said:

> It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconsitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that amendment.

The suit was to enjoin the enforcement of a statute of Nebraska because it was alleged to be unconstitutional, on account of the rates being too low to afford some compensation to the company, and contrary, therefore, to the fourteenth amendment.

There was no special provision in the statute as to rates, making it the duty of the attorney-general to enforce it, but under his general powers he had authority to ask for a mandamus to enforce such or

any other law. State of Nebraska ex rel. &c. *v.* The Fremont &c. Railroad Co., 22 Neb., 313.

The final decree enjoined the attorney-general from bringing any suit (page 477) by way of injunction, mandamus, civil action, or indictment for the purpose of enforcing the provisions of the act. The fifth section of the act provided that an action might be brought by a railroad company in the supreme court of the State of Nebraska; but this court did not base its decision on that section when it held that a suit of the nature of that before it was not a suit against a State, although brought against individual State officers for the purpose of enjoining them from enforcing, either by civil proceeding or indictment, an unconstitutional enactment to the injury of the plaintiff's right. (Page 518.)

This decision was reaffirmed in Prout *v.* Starr, 188 U. S., 537, 542.

Attention is also directed to the case of Missouri &c. Rwy. Co. *v.* Missouri R. R. &c. Commissioners, 183 U. S., 53. That was a suit brought in a State court of Missouri by the railroad commissioners of the State, who had the powers granted them by the statutes set forth in the report. Their suit was against the railway company to compel it to discontinue certain charges it was making for crossing the Boonville bridge over the Missouri River. The defendant sought to remove the case to the Federal court, which the plaintiffs resisted, and the State court refused to remove on the ground that the real plaintiff was the State of Missouri, and it was proper to go behind the face of the record to determine that fact. In regular manner the case came here, and this court held that the State was not the real party plaintiff, and the case had therefore been properly removed from the State court, whose judgment was thereupon reversed.

Applying the same principles of construction to the removal act which had been applied to the eleventh amendment, it was said by this court that the State might be the real party plaintiff when the relief sought inures to it alone, and in whose favor the judgment or decree, if for the plaintiff, will effectively operate.

Although the case is one arising under the removal act and does not involve the eleventh amendment, it nevertheless illustrates the question now before us, and reiterates the doctrine that the State is not a party to a suit simply because the State railroad commission is such party.

The doctrine of Smyth *v.* Ames is also referred to and reiterated in Gunter, Attorney-General *v.* Atlantic &c. Railroad Co., 200 U. S., 273, 283. See also McNeill *v.* Southern Railway, 202 U. S., 443–559; Mississippi Railroad Commission *v.* Illinois &c. Railroad Co., 203 U. S., 335, 340.

The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.

It is objected, however, that Fitts *v.* McGhee (172 U. S., 516) has somewhat limited this principle, and that, upon the authority of that case, it must be held that the State was a party to the suit in the

United States circuit court and the bill should have been dismissed as to the attorney-general on that ground.

We do not think such contention is well founded. The doctrine of Smyth *v.* Ames was neither overruled nor doubted in the Fitts case. In that case the Alabama legislature, by the act of 1895, fixed the tolls to be charged for crossing the bridge. The penalties for disobeying that act, by demanding and receiving higher tolls, were to be collected by the persons paying them. No officer of the State had any official connection with the recovery of such penalties. The indictments mentioned were found under another State statute, set forth at page 520 of the report of the case, which provided a fine against an officer of a company for taking any greater rate of toll than was authorized by its charter, or, if the charter did not specify the amount, then the fine was imposed for charging any unreasonable toll, to be determined by the jury. This act was not claimed to be unconstitutional, and the indictments found under it were not necessarily connected with the alleged unconstitutional act fixing the tolls. As no State officer who was made a party bore any close official connection with the act fixing the tolls, the making of such officer a party defendant was a simple effort to test the constitutionality of such act in that way, and there is no principle upon which it could be done. A State superintendent of schools might as well have been made a party. In the light of this fact it was said in the opinion (p. 530):

> In the present case, as we have said, neither of the State officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney-general, based upon the theory that the former, as the executive of the State, was, in a general sense, charged with the execution of all its laws, and the latter, as attorney-general, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which can not be applied to the States of the Union consistently with the fundamental principle that they can not, without their assent, be brought into any court at the suit of private persons.

In making an officer of the State a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and thereby attempting to make the State a party.

It has not, however, been held that it was necessary that such duty should be declared in the same act which is to be enforced. In some cases, it is true, the duty of enforcement has been so imposed (154 U. S., 362, 366, sec. 19 of the act), but that may possibly make the duty more clear; if it otherwise exist, it is equally efficacious. The fact that the State officer by virtue of his office has some connection with the enforcement of the act is the important and material fact, and whether it arises out of the general law or is specially created by the act itself is not material so long as it exists.

In the course of the opinion in the Fitts case the Reagan and Smyth cases were referred to (with others) as instances of State officers specially charged with the execution of a State enactment

alleged to be unconstitutional, and who commit under its authority some specific wrong or trespass to the injury of plaintiff's rights. In those cases the only wrong or injury or trespass involved was the threatened commencement of suits to enforce the statute as to rates, and the threat of such commencement was in each case regarded as sufficient to authorize the issuing of an injunction to prevent the same. The threat to commence those suits under such circumstances was therefore necessarily held to be equivalent to any other threatened wrong or injury to the property of a plaintiff which had theretofore been held sufficient to authorize the suit against the officer. The being specially charged with the duty to enforce the statute is sufficiently apparent when such duty exists under the general authority of some law, even though such authority is not to be found in the particular act. It might exist by reason of the general duties of the officer to enforce it as a law of the State.

The officers in the Fitts case occupied the position of having no duty at all with regard to the act, and could not be properly made parties to the suit for the reason stated.

It is also objected that as the statute does not specifically make it the duty of the attorney-general (assuming he has that general right) to enforce it, he has under such circumstances a full general discretion whether to attempt its enforcement or not, and the court can not interfere to control him as attorney-general in the exercise of his discretion.

In our view there is no interference with his discretion under the facts herein. There is no doubt that the court can not control the exercise of the discretion of an officer. It can only direct affirmative action where the officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such action. In that case the court can direct the defendant to perform this merely ministerial duty. (Board of Liquidation *v.* McComb, 92 U. S., 531-541.)

The general discretion regarding the enforcement of the laws when and as he deems appropriate is not interfered with by an injunction which restrains the State officer from taking any steps toward the enforcement of an unconstitutional enactment to the injury of complainant. In such case no affirmative action of any nature is directed, and the officer is simply prohibited from doing an act which he had no legal right to do. An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer.

It is also argued that the only proceeding which the attorney-general could take to enforce the statute, so far as his office is concerned, was one by mandamus, which would be commenced by the State in its sovereign and governmental character, and that the right to bring such action is a necessary attribute of a sovereign government. It is contended that the complainants do not complain and they care nothing about any action which Mr. Young might take or bring as an ordinary individual, but that he was complained of as an officer, to whose discretion is confided the use of the name of the State of Minnesota so far as litigation is concerned, and that when or how he shall use it is a matter resting in his discretion and can not be controlled by any court.

The answer to all this is the same as made in every case where an official claims to be acting under the authority of the State. The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of and one which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a State official in attempting by the use of the name of the State to enforce a legislative enactment which is void because unconstitutional. If the act which the State attorney-general seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. (See In re Ayers, supra, p. 507.) It would be an injury to complainant to harass it with a multiplicity of suits or litigation generally in an endeavor to enforce penalties under an unconstitutional enactment, and to prevent it ought to be within the jurisdiction of a court of equity. If the question of unconstitutionality with reference, at least, to the Federal Constitution be first raised in a Federal court, that court, as we think is shown by the authorities cited hereafter, has the right to decide it to the exclusion of all other courts.

The question remains whether the attorney-general had, by the law of the State, so far as concerns these rate acts, any duty with regard to the enforcement of the same. By his official conduct it seems that he regarded it as a duty connected with his office to compel the company to obey the commodity act, for he commenced proceedings to enforce such obedience immediately after the injunction issued, at the risk of being found guilty of contempt by so doing.

The duties of the attorney-general, as decided by the supreme court of the State of Minnesota, are created partly by statute and exist partly as at common law. (State ex rel. Young, attorney-general, *v.* Robinson (decided June 7, 1907), 112 N. W. Rep., 269.) In the above-cited case it was held that the attorney-general might institute, conduct, and maintain all suits and proceedings he might deem necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights, and that there were no statutory restrictions in that State limiting the duties of the attorney-general in such case.

Section 3 of chapter 227 of the General Laws of Minnesota, 1905 (same law, sec. 58, Revised Laws of Minnesota, 1905), imposes the duty upon the attorney-general to cause proceedings to be instituted against any corporation whenever it shall have offended against the laws of the State. By section 1960 of the revised laws of 1905 it is also provided that the attorney-general shall be ex officio attorney for the railroad commission, and it is made his duty to institute and prosecute all actions which the commission shall order brought, and shall render the commissioners all counsel and advice necessary for the proper performance of their duties.

It is said that the attorney-general is only bound to act when the commission orders action to be brought, and that section 5 of the commodity act (April 18, 1907) expressly provides that no duty shall rest upon the commission to enforce the act, and hence no duty other than that which is discretionary rests upon the attorney-general in that matter. The provision is somewhat unusual, but the reasons for its insertion in that act are not material, and neither require nor justify comment by this court.

It would seem to be clear that the attorney-general, under his power existing at common law and by virtue of these various statutes, had a general duty imposed upon him, which includes the right and the power to enforce the statutes of the State, including, of course, the act in question, if it were constitutional. His power by virtue of his office sufficiently connected him with the duty of enforcement to make him a proper party to a suit of the nature of the one now before the United States circuit court.

It is further objected (and the objection really forms part of the contention that the State can not be sued) that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment or otherwise, under the State law. This, as a general rule, is true. But there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject-matter of inquiry in a suit already pending in a Federal court, the latter court having first obtained jurisdiction over the subject-matter, has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed. (Prout *v.* Starr, 188 U. S., 537–542–544.) But the Federal court can not, of course, interfere in a case where the proceedings were already pending in a State court. (Taylor *v.* Taintor, 16 Wall., 336–370; Harkrader *v.* Wadley, 172 U. S., 148.)

Where one commences a criminal proceeding who is already party to a suit then pending in a court of equity, if the criminal proceedings are brought to enforce the same right that is in issue before that court, the latter may enjoin such criminal proceedings. (Davis &c. Co. *v.* Los Angeles, 189 U. S., 207.) In In re Dobbins *v.* Los Angeles, 195 U. S., 223–241, it is remarked by Mr. Justice Day, in delivering the opinion of the court, that "it is well settled that where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a court of equity." Smyth *v.* Ames (supra) distinctly enjoined the proceedings by indictment to compel obedience to the rate act.

These cases show that a court of equity is not always precluded from granting an injunction to stay proceedings in criminal cases, and we have no doubt the principle applies in a case such as the present. In re Sawyer, 124 U. S., 200, 211, is not to the contrary. That case holds that in general a court of equity has no jurisdiction of a bill to stay criminal proceedings, but it expressly states an exception, "unless they are instituted by a party to the suit already pending before it and to try the same right that is in issue there." Various authorities are cited to sustain the exception. The criminal proceedings here that could be commenced by the State authorities would be under the statutes relating to passenger or freight rates, and their validity is the very question involved in the suit in the United States

circuit court. The right to restrain proceedings by mandamus is based upon the same foundation and governed by the same principles.

It is proper to add that the right to enjoin an individual, even though a State official, from commencing suits under circumstances already stated does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court, and an injunction against a State court would be a violation of the whole scheme of our Government. If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account.

The difference between the power to enjoin an individual from doing certain things and the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former.

It is further objected that there is a plain and adequate remedy at law open to the complainants and that a court of equity, therefore, has no jurisdiction in such case. It has been suggested that the proper way to test the constitutionality of the act is to disobey it, at least once, after which the company might obey the act pending subsequent proceedings to test its validity. But in the event of a single violation the prosecutor might not avail himself of the opportunity to make the test, as obedience to the law was thereafter continued, and he might think it unnecessary to start an inquiry. If, however, he should do so while the company was thereafter obeying the law, several years might elapse before there was a final determination of the question, and if it should be determined that the law was invalid the property of the company would have been taken during that time without due process of law, and there would be no possibility of its recovery.

Another obstacle to making the test on the part of the company might be to find an agent or employee who would disobey the law, with a possible fine and imprisonment staring him in the face if the act should be held valid. Take the passenger-rate act, for instance: A sale of a single ticket above the price mentioned in that act might subject the ticket agent to a charge of felony, and upon conviction to a fine of five thousand dollars and imprisonment for five years. It is true the company might pay the fine, but the imprisonment the agent would have to suffer personally. It would not be wonderful if, under such circumstances, there would not be a crowd of agents offering to disobey the law. The wonder would be that a single agent should be found ready to take the risk.

If, however, one should be found, and the prosecutor should elect to proceed against him, the defense that the act was invalid, because the rates established by it were too low, would require a long and difficult examination of quite complicated facts upon which the validity of the act depended. Such investigation it would be almost impossible to make before a jury, as such body could not intelligently pass upon the matter. Questions of the cost of transportation of passengers and freight, the net earnings of the road, the separation of

the cost and earnings within the State from those arising beyond its boundaries, all depending upon the testimony of experts and the examination of figures relating to these subjects, as well, possibly, as the expenses attending the building and proper cost of the road, would necessarily form the chief matter of inquiry, and intelligent answers could only be given after a careful and prolonged examination of the whole evidence, and the making of calculations based thereon. All material evidence having been taken upon these issues, it has been held that it ought to be referred to the most competent and reliable master to make all needed computations and to find therefrom the necessary facts upon which a judgment might be rendered that might be reviewed by this court. (Chicago &c. Railway Co. *v.* Tomkins, 176 U. S., 167.) From all these considerations it is plain that this is not a proper suit for investigation by a jury. Suits for penalties, or indictment or other criminal proceedings for a violation of the act, would therefore furnish no reasonable or adequate opportunity for the presentation of a defense founded upon the assertion that the rates were too low and therefore the act invalid.

We do not say the company could not interpose this defense in an action to recover penalties or upon the trial of an indictemnt (St. Louis &c. Ry. Co. *v.* Gill, 156 U. S., 649), but the facility of proving it in either case falls so far below that which would obtain in a court of equity that comparison is scarcely possible.

To await proceedings against the company in a State court grounded upon a disobedience of the act, and then, if necessary, obtain a review in this court by writ of error to the highest State court, would place the company in peril of large loss and its agents in great risk of fines and imprisonment if it should be finally determined that the act was valid. This risk the company ought not to be required to take. Over eleven thousand millions of dollars, it is estimated, are invested in railroad property, owned by many thousands of people who are scattered over the whole country from ocean to ocean, and they are entitled to equal protection from the laws and from the courts, with the owners of all other kinds of property, no more, no less. The courts having jurisdiction, Federal or State, should at all times be open to them as well as to others, for the purpose of protecting their property and their legal rights.

All objections to a remedy at law as being plainly inadequate are obviated by a suit in equity, making all who are directly interested parties to the suit, and enjoining the enforcement of the act until the decision of the court upon the legal question.

An act of the legislature fixing rates, either for passengers or freight, is to be regarded as prima facie valid, and the onus rests upon the company to prove its assertion to the contrary. Under such circumstances it was stated by Mr. Justice Miller, in his concurring opinion in Chicago &c. Co. *v.* Minnesota, 134 U. S., 418–460, that the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission is by a bill in chancery, asserting its unreasonable character, and that until the decree of the court in such equity suit was obtained it was not competent for each individual having dealings with a carrier, or for the carrier in regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive manner. This remedy

by bill in equity is referred to and approved by Mr. Justice Shiras, in delivering the opinion of the court in St. Louis &c. Co. *v.* Gill, 156 U. S., 649, 659, 666, although that question was not then directly before the court. Such remedy is undoubtedly the most convenient, the most comprehensive, and the most orderly way in which the rights of all parties can be properly, fairly, and adequately passed upon. It can not be to the real interest of any one to injure or cripple the resources of the railroad companies of the country, because the prosperity of both the railroads and the country is most intimately connected. The question of sufficiency of rates is important and controlling, and being of a judicial nature it ought to be settled at the earliest moment by some court, and when a Federal court first obtains jurisdiction it ought, on general principles of jurisprudence, to be permitted to finish the inquiry and make a conclusive judgment to the exclusion of all other courts. This is all that is claimed, and this, we think, must be admitted.

Finally it is objected that the necessary result of upholding this suit in the circuit court will be to draw to the lower Federal courts a great flood of litigation of this character, where one Federal judge would have it in his power to enjoin proceedings by State officials to enforce the legislative acts of this State, either by criminal or civil actions. To this it may be answered, in the first place, that no injunction ought to be granted unless in a case reasonably free from doubt. We think such rule is, and will be, followed by all the judges of the Federal courts.

And, again, it must be remembered that jurisdiction of this general character has, in fact, been exercised by Federal courts from the time of Osborn *v.* United States Bank up to the present; the only difference in regard to the case of Osborn and the case in hand being that in this case the injury complained of is the threatened commencement of suits, civil or criminal, to enforce the act, instead of, as in the Osborn case, an actual and direct trespass upon or interference with tangible property and the enjoining of State officers mencement of suits to enforce an unconstitutional act, under the circumstances already mentioned, is no new invention, as we have already seen. The difference between an actual and direct interference with tangible property and the enjoining of State officers from enforcing an unconstitutional act, is not of a radical nature, does not extend, in truth, the jurisdiction of the courts over the subject-matter. In the case of the interference with property the person enjoined is assuming to act in his capacity as an official of the State, and justification for his interference is claimed by reason of his position as a State official. Such official can not so justify when acting under an unconstitutional enactment of the legislature. So, where the State official, instead of directly interfering with tangible property, is about to commence suits, which have for their object the enforcement of an act which violates the Federal Constitution, to the great and irreparable injury of the complainants, he is seeking the same justification from the authority of the State as in other cases. The sovereignty of the State is, in reality, no more involved in one case than in the other. The State can not in either case impart to the official immunity from responsibility to the supreme authority of the United States. (See In re Ayers, 123 U. S. (supra), p. 507.)

This supreme authority, which arises from the specific provisions of the Constitution itself, is nowhere more fully illustrated than in the series of decisions under the Federal habeas corpus statute (sec. 753, U. S. Rev. Stat.), in some of which cases persons in the custody of State officers for alleged crimes against the State have been taken from that custody and discharged by a Federal court or judge because the imprisonment was adjudged to be in violation of the Federal Constitution. The right to so discharge has not been doubted by this court, and it has never been supposed there was any suit against the State by reason of serving the writ upon one of the officers of the State in whose custody the person was found. In some of the cases the writ has been refused as matter of discretion, but in others it has been granted, while the power has been fully recognized in all. (Ex parte Royall, 117 U. S., 241; In re Loney, 134 Id., 372; In re Neagle, 135 Id., 1; Baker *v.* Grice, 169 Id., 284; Ohio *v.* Thomas, 173 Id., 276; Minnesota *v.* Brundage, 180 Id., 499, 502; Reid *v.* Jones, 187 Id., 153; United States *v.* Lewis, 200 Id., 1; In re Lincoln, 202 Id., 178.)

It is somewhat difficult to appreciate the distinction which, while admitting that the taking of such a person from the custody of the State by virtue of service of the writ on the State officer in whose custody he is found, is not a suit against the State, and yet service of a writ on the attorney-general to prevent his enforcing an unconstitutional enactment of a State legislature is a suit against the State.

There is nothing in the case before us that ought properly to breed hostility to the customary operation of Federal courts of justice in cases of this character.

The rule to show cause is discharged and the petition for writs of habeas corpus and certiorari is dismissed.

So ordered.

Supreme Court of the United States. No. 10, original.—October term, 1907. Ex parte: In the matter of Edward T. Young, petitioner. Petitions for writs of habeas corpus and certiorari and motion for leave to file same. [March 23, 1908.]

Mr. Justice HARLAN dissenting.

Although the history of this litigation is set forth in the opinion of the court, I deem it appropriate to restate the principal facts of the case in direct connection with my examination of the question upon which the decision turns. That question is, whether the suit in the circuit court of the United States was, *as to the relief sought against the attorney-general of Minnesota*, forbidden by the eleventh amendment of the Constitution of the United States, declaring that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." That examination, I may say at the outset, is entered upon with no little embarrassment, in view of the fact that the views expressed by me are not shared by my brethren. I may also frankly admit embarrassment arising from certain views stated in dissenting opinions heretofore delivered by me which did

not, at the time, meet the approval of my brethern, and which I do not now myself entertain. What I shall say in this opinion will be in substantial accord with what the court has heretofore decided, while the opinion of the court departs, as I think, from principles previously announced by it upon full consideration. I propose to adhere to former decisions of the court, whatever may have been once my opinion as to certain aspects of this general question.

The plaintiffs in the suit referred to, Perkins and Shepard, were shareholders of the Northern Pacific Railway Company and citizens, respectively, of Iowa and Minnesota. The defendants were the railway company, Edward T. Young, attorney-general of Minnesota, the several members of the State railroad and warehouse commission, and certain persons who were shippers of freight over the lines of that railway.

The general object of the suit was to prevent compliance with the provisions of certain acts of the Minnesota legislature and certain orders of the State railroad and warehouse commission, indicating the rates which the State permits to be charged for the transportation of passengers and commodities upon railroads within its limits; also, to prevent shippers from bringing actions against the railway company to enforce those acts and orders.

The bill, among other things, prayed that Edward T. Young, "as attorney-general of the State of Minnesota," and the members of the State railroad and warehouse commission (naming them) be enjoined from all attempts to compel the railway company to put in force the rates or any of them prescribed by said orders, and "from taking any action, step, or proceeding against said railway company, or any of its officers, directors, agents, or employees, to enforce any penalties or remedies for the violation by said railway company of said orders or either of them;" and that said Young, "as attorney-general," be enjoined from taking any action, step, or proceeding against the railway company, its officers, agents, or employees, to enforce the penalties and remedies specified in those acts.

The court gave a temporary injunction as prayed for. The attorney-general of Minnesota appeared specially and, without submitting to or acknowledging the jurisdiction of the court, moved to dismiss the suit as to him, upon the ground that the State had not consented to be sued, and also because the bill was exhibited against him "as, and only as, the attorney-general of the State of Minnesota," to restrain him, by injunction, from exercising the discretion vested in him to commence appropriate actions, on behalf of the State, to enforce or to test the validity of its laws. He directly raised the question that the suit as to him, in his official capacity, was one against the State, in violation of the eleventh amendment.

In response to an order to show cause why the injunction asked for should not be granted the attorney-general also appeared specially and urged like objections to the suit against him in the circuit court.

After hearing the parties the court made an order September 23, 1907, whereby the railway company, its officers, directors, agents, servants, and employees, were enjoined until the further order of the court from publishing, adopting, or putting into effect the tariffs, rates, or charges specified in the act of April 18, 1907. The court likewise enjoined the defendant Young, "as attorney-general of the State of Minnesota," from "taking or instituting any action, suit,

step, or proceeding to enforce the penalties and remedies specified in said act or either thereof, or to compel obedience to said act or compliance therewith or any part thereof." A like injunction was granted against the defendant shippers.

On the next day, September 24, 1907, the State of Minnesota, "on the relation of Edward T. Young, attorney-general," commenced an action in one of its own courts against the Northern Pacific Railway Company—*the only relief sought* being a mandamus ordering the company to adopt, publish, keep for public inspection, and put into effect, as the rates and charges to be maintained for the transportation of freight between stations in Minnesota, those named and specified in what is known as chapter 232 of the session laws of Minnesota for 1907. That was the act which it was the object of the Perkins-Shepard suit in the Federal court to strike down and nullify. An alternative writ of mandamus, such as the State asked, was issued by the State court.

The institution, in the State court, by the State, on the relation of its attorney-general, of the mandamus proceeding against the railway company having been brought to the attention of the Federal circuit court, a rule was issued against the defendant Young to show cause why he should not be punished as for contempt. Answering that rule, he alleged, among other things, that the mandamus proceeding was brought by and on behalf of the State, through him as its attorney-general; that in every way possible he had objected to such jurisdiction on the ground that the action was commenced against him solely as the attorney-general for Minnesota in order to prevent him from instituting in the proper courts civil actions for and in the name of the State to enforce or test the validity of its laws; *that there is no other action or proceeding pending or contemplated by this defendant against said railway company, except said proceedings in mandamus hereinbefore referred to.* Defendant expressly disclaimed any intention to treat this court with disrespect in the commencement of the proceedings referred to, "but believing that the decision of this court in this action, holding that it had jurisdiction to enjoin this defendant, as such attorney-general, from performing his discretionary official duties, was in conflict with the eleventh amendment of the Constitution of the United States, as the same has been interpreted and applied by the United States Supreme Court, defendant believed it to be his duty as such attorney-general to commence said mandamus proceedings for and in behalf of the State, and it was in this belief that said proceedings were commenced solely for the purpose of enforcing the said law of the State of Minnesota."

The rule was heard, and the attorney-general was held to be in contempt, the order of the Federal court being: "Ordered further, that said Edward T. Young *forthwith dismiss or cause to be dismissed the suit of the State of Minnesota* on the relation of Edward T. Young, attorney-general, plaintiff, *v.* Northern Pacific Railway Company, defendant, heretofore instituted by him in the district court of the county of Ramsey, second judicial district, State of Minnesota. Ordered further, that for his said contempt said Edward T. Young be fined the sum of $100 and *stand committed in the custody* of the marshal of this court until the same be paid, and until he purge himself of his contempt by dismissing or causing to be dismissed said suit last herein mentioned."

The present proceeding was commenced by an original application by Young to this court for a writ of habeas corpus. The petitioner, in his application, proceeds upon the ground that he is held in custody in violation of the Constitution of the United States. The petition set out all the steps taken in the suit in the Federal court, alleging, among other things: "That your petitioner's office as attorney-general of the State of Minnesota is established and provided for by the constitution of said State, section 1 of Article V thereof providing as follows, to wit: 'The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, who shall be chosen by the electors of the State.' That neither by statute nor otherwise is your petitioner charged with any special duty of a ministerial character in the doing or not doing of which said complainants in the said bill of complaint or the said Northern Pacific Railway Company had any legal right, and that whatever duties your petitioner had or has with respect to the several matters complained of in the said bill of complaint, are of an executive and discretionary nature. That in no case could your petitioner, even though it was his intention so to do, which it was not, deprive the said complainants or the said Northern Pacific Railway Company, or either of them, of any property, nor could he trespass upon their rights in any particular, and that all he could do *as attorney-general* as aforesaid and all that it was his duty to do in that capacity, and all that he intended to do or would do, *was to commence formal judicial proceedings in the appropriate court of Minnesota against the said Northern Pacific Railway Company, its officers, agents, and employees*, to compel the said company, its agents and servants, to adopt and put in force the schedule of freight rates, tariffs, and charges prescribed by said chapter 232, laws 1907, of the State of Minnesota." He renewed the objection that the suit instituted by Perkins and Shepard, in so far as the same is against him, was a suit against the State to prevent his commencing the proposed action in the name of the State, and was in restraint of the State itself, "and that the said suit is one against the said State in violation of the eleventh amendment to the Constitution of the United States, and that therefore the same is and was, so far as your petitioner is concerned, beyond the jurisdiction of the said circuit court," etc.

This statement will sufficiently indicate the nature of the question to be now examined upon its merits.

Let it be observed that the suit instituted by Perkins and Shepard in the circuit court of the United States was, as to the defendant Young, one against him *as, and only because he was*, attorney-general of Minnesota. No relief was sought against him individually but only in his capacity *as* attorney-general. And the manifest, indeed the avowed and admitted, object of seeking such relief was *to tie the hands* of the *State* so that it could not in any manner or by any mode of proceeding, *in its own courts*, test the validity of the statutes and orders in question. It would therefore seem clear that within the true meaning of the eleventh amendment the suit brought in the Federal court was one, in legal effect, against the State—as much so as if the State had been formally named on the record as a party—and therefore it was a suit to which, under the amendment, so far as the State or its attorney-general was concerned, the judicial power of

the United States did not and could not extend. If this proposition be sound it will follow—indeed, it is conceded that if, so far as relief is sought against the attorney-general of Minnesota, this be a suit against the State—then the order of the Federal court enjoining that officer from taking any action, suit, step, or proceeding to compel the railway company to obey the Minnesota statute was beyond the jurisdiction of that court and wholly void; in which case that officer was at liberty to proceed in the discharge of his official duties as defined by the laws of the State, and the order adjudging him to be in contempt for bringing the mandamus proceeding in the State court was a nullity.

The fact that the Federal circuit court had, prior to the institution of the mandamus suit in the State court, preliminarily (but not finally) held the statutes of Minnesota and the orders of its railroad and warehouse commission in question to be in violation of the Constitution of the United States, was no reason why that court should have laid violent hands upon the attorney-general of Minnesota and by its orders have deprived the State of the services of its constitutional law officer in its own courts. Yet that is what was done by the Federal circuit court; for, the intangible thing called a State, however extensive its powers, can never appear or be represented or known in any court in a litigated case except by and through its officers. When, therefore, the Federal court forbade the defendant, Young, as attorney-general of Minnesota, from taking any action, suit, step, or proceeding whatever looking to the enforcement of the statutes in question, it said in effect to the State of Minnesota: "It is true that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to its people, and it is true that under the Constitution the judicial power of the United States does not extend to any suit brought against a State by a citizen of another State or by a citizen or subject of a foreign State, yet the Federal court adjudges that you, the State, although a sovereign for many important governmental purposes, shall not appear in your own courts, by your law officers, with the view of enforcing, or even for determining the validity of, the State enactments which the Federal court has, upon a preliminary hearing, declared to be in violation of the Constitution of the United States."

This principle, if firmly established, would work a radical change in our governmental system. It would inaugurate a new era in the American judicial system and in the relations of the National and State governments. It would enable the subordinate Federal courts to supervise and control the official action of the States as if they were "dependencies" or provinces. It would place the States of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the eleventh amendment was made a part of the supreme law of the land. I can not suppose that the great men who framed the Constitution ever thought the time would come when a subordinate Federal court, having no power to compel a State, in its corporate capacity, to appear before it as a litigant, would yet assume to deprive a State of the right to be represented in its own courts by its regular law officer. That is what the court below did as to Minnesota, when it adjudged that the appearance of the defendant, Young, *in the State court*, as the attorney-general of

Minnesota representing his State as its chief law officer, was a contempt of the authority of the Federal court, punishable by fine and imprisonment. Too little consequence has been attached to the fact that the courts of the States are under an obligation equally strong with that resting upon the courts of the Union to respect and enforce the provisions of the Federal Constitution as the supreme law of the land and to guard rights secured or guaranteed by that instrument. We must assume—a decent respect for the States require us to assume—that the State courts will enforce every right secured by the Constitution. If they fail to do so, the party complaining has a clear remedy for the protection of his rights; for he can come by writ of error, in an orderly, judicial way from the highest court of the State to this tribunal for redress in respect of every right granted or secured by that instrument and denied by the State court. The State courts, it should be remembered, have jurisdiction concurrent with the courts of the United States of all suits of a civil nature, at common law or equity involving a prescribed amount, arising under the Constitution or laws of the United States. (25 Stat., 434.) And this court has said: "A State court of original jurisdiction, having the parties before it, may, consistently with existing Federal legislation determine cases at law or in equity arising under the Constitution or laws of the United States or involving rights dependent upon such Constitution or laws. Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, 'anything in the Constitution or laws of any State to the contrary notwithstanding.' If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination." (Robb *v.* Connolly, 111 U. S., 624, 637.) So that an order of the Federal court preventing the State from having the services of its attorney-general in one of its own courts, except at the risk of his being fined and arrested, can not be justified upon the ground that the question of constitutional law involved in the enforcement of the statutes in question was beyond the competency of a State court to consider and determine, primarily, as between the parties before it in a suit brought by the State itself.

At the argument of this case counsel for the railway company insisted that the provisions of the act in question were so drastic that they could be enforced by the State in its own courts with such persistency and in such a manner as, in a very brief period, to have the railway officers and agents all in jail, the business of the company destroyed and its property confiscated by heavy and successive penalties, before a final judicial decision as to the constitutionality of the act could be obtained. I infer from some language in the court's opinion that these apprehensions are shared by some of my brethren.

And this supposed danger to the railway company and its shareholders seems to have been the basis of the action of the Federal circuit court when, by its order directed against the attorney-general of Minnesota, it practically excluded the State from its own courts in respect of the issues here involved. But really no such question as to the State statute is here involved or need be now considered; for it can not possibly arise on the hearing of the present application of that officer for discharge on habeas corpus. The only question now before this court is whether the suit by Perkins and Shepard in the Federal court was not, upon its face, *as to the relief sought against the attorney-general of Minnesota*, a suit against the State. Stated in another form, the question is whether that court may, *by operating upon that officer in his official capacity*, by means of fine and imprisonment, prevent the State from being represented by its law officer in one of its own courts? If the Federal court could not thus put manacles upon the State so as to prevent it from being represented by its attorney-general in its own court and from having the State court pass upon the validity of the State enactment in question in the Perkins-Shephard suit, that is an end to this habeas corpus proceeding, and the attorney-general of Minnesota should be discharged by order of this court from custody.

It is to be observed that when the State was in effect prohibited by the order of the Federal court from appearing in its own courts, there was no danger, absolutely none whatever, from anything that the attorney-general had ever done or proposed to do, that the property of the railway company would be confiscated and its officers and agents imprisoned, beyond the power of that company to stay any wrong done *by bringing to this court, in regular order, any final judgment of the State court, in the mandamus suit, which may have been in derogation of a Federal right.* When the attorney-general instituted the mandamus proceeding in the State court against the railway company there was in force, it must not be forgotten, an order of injunction by the Federal court which prevented that company from obeying the State law. There was consequently no danger from that direction. Besides, the mandamus proceeding was not instituted for the recovery of any of the penalties prescribed by the State law, and therefore no judgment in that case could operate directly upon the property of the railway company or upon the persons of its officers or agents. The attorney-general in his response to the rule against him assured the Federal court that he did not contemplate any proceeding whatever against the railway company except the one in mandamus. Suppose the mandamus case had been finally decided in the State court, the way was open for the railway company to preserve any question it made as to its rights under the Constitution, and, in the event of a decision adverse to it in that court, at once to carry the case to the highest court of Minnesota and thence by a writ of error bring it to this court. That course would have served to determine every question of constitutional law raised by the suit in the Federal court in an orderly way without trampling upon the State, and without interfering, in the meantime, with the operation of the railway property in the accustomed way. Instead of adopting that course—so manifestly consistent with the dignity and authority of both the Federal and State judicial tribunals—the Federal court practically closed the State courts against the State itself when it

adjudged that the attorney-general, without regard to the wishes of the governor of Minnesota, and without reference to his duties as prescribed by the laws of that State, should stand in the custody of the marshal, unless he dismissed the mandamus suit. If the Federal court could thus prohibit the law officer of the State from representing it in a suit brought in the State court, why might not the bill in the Federal court be so amended that that court could reach all the district attorneys in Minnesota and forbid them from bringing to the attention of grand juries and the State courts violations of the State act by the railway company? And if a grand jury was about to inquire into the acts of the railway company in respect of the matter of its rates, why may not the Federal court, proceeding upon the same grounds on which it has moved against the attorney-general, enjoin the finding or returning of indictments against the railway company? If an indictment was returned against the railway company, and was about to be tried by a petit jury, why could not the Federal court, upon the principles now announced, forbid the jury to proceed against the railway company, and, if it did, punish every petit juryman as for contempt of court? Indeed, why may it not lay its hands on the governor of the State and forbid him from appealing to the courts of Minnesota in the name of the State to test the validity of the act in question? And why may not the Federal court lay its hands even upon the judge of the State court itself whenever it proceeds against the railway company under the State law?

The subject-matter of these questions have evidently been considered by this court, and the startling consequences that would result from an affirmative answer to them have not been overlooked; for, in its opinion, I find these observations: "It is proper to add that the right to enjoin an individual, even though a State official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court, and an injunction against a State court would be a violation *of the whole scheme of our Government.* If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account. The difference between the power to enjoin an individual from doing certain things and the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former." If an order of the Federal court forbidding a State court or its grand jury from attempting to enforce a State enactment would be "a violation of the whole scheme of our Government," it is difficult to perceive why an order of that court, forbidding the chief law officer and all the district attorneys of a State to represent it in the courts in a particular case, and practically, in that way, closing the doors of the State court against the State, would not also be inconsistent with the whole scheme of our Government, and therefore beyond the power of the court to make.

Whether the Minnesota statutes are or are not violative of the Constitution is not, as already suggested, a question in this habeas corpus proceeding. I do not, therefore, stop to consider whether those statutes are repugnant to the Constitution upon the ground that by their necessary operation, when enforced, they will prevent the railway company from contesting their validity, or upon the ground that they are confiscatory and therefore obnoxious to the requirement of due process of law. While the argument at the bar in support of each of these propositions was confessedly of great force and persuasiveness, those points need not be now examined. I express no opinion about them. Their soundness may, however, be conceded for the purposes of this discussion. Indeed, it may be assumed for the purposes of this discussion that these State enactments are harsh and intemperate, and, in some of their features, invalid. But those questions are wholly apart from the present proceeding. If we now consider them, we must go out of our way in order to do so. We have no evidence in this proceeding as to the effect which the statutes, if enforced, would have upon the value either of the railway property or of the bonds or stocks of the railway company. The question of their validity has not been finally decided by the circuit court, and we have not before us even the evidence upon which its preliminary injunction was based. The essential and only question now before us or that need be decided is whether an order by the Federal court which prevents the State from being represented in its own courts, by its chief law officer, upon an issue involving the constitutional validity of certain State enactments, does not make a suit against the State within the meaning of the eleventh amendment. If it be a suit of that kind, then, it is conceded, the circuit court was without jurisdiction to fine and imprison the petitioner and he must be discharged, whatever our views may be as to the validity of those State enactments. This must necessarily be so unless the amendment has less force and a more restricted meaning now than it had at the time of its adoption, and unless a suit against the attorney-general of a State, in his official capacity, is not one against a State under the eleventh amendment when its determination depends upon a question of constitutional power or right under the fourteenth amendment. In that view I can not concur. In my opinion, the eleventh amendment has not been modified in the slightest degree as to its scope or meaning by the fourteenth amendment, and a suit which, in its essence, is one against the State remains one of that character and is forbidden even when brought to strike down a State statute alleged to be in violation of that clause of the fourteenth amendment forbidding the deprivation, by a State, of life, liberty, or property without due process of law. If a suit be commenced in a State court, and involves a right secured by the Federal Constitution, the way is open under our incomparable judicial system to protect that right, first, by the judgment of the State court, and ultimately by the judgment of this court, upon writ of error. But such right can not be protected by means of a suit which, at the outset, is directly or in legal effect one against the State whose action is alleged to be illegal. That mode of redress is absolutely forbidden by the eleventh amendment and can not be made legal by mere construction or by any consideration of the consequences that may follow

from the operation of the statute. Parties can not, in any case, obtain redress by a suit *against the State*. Such has been the uniform ruling in this court, and it is most unfortunate that it is now declared to be competent for a Federal circuit court, by exerting its authority over the chief law officer of the State, without the consent of the State to exclude the State, in its sovereign capacity, from its own courts when seeking to have the ruling of those courts as to its powers under its own statutes. Surely the right of a State to invoke the jurisdiction of its own courts is not less than the right of individuals to invoke the jurisdiction of a Federal court. The preservation of the dignity and sovereignty of the States, within the limits of their constitutional powers, is of the last importance and vital to the preservation of our system of Government. The courts should not permit themselves to be driven by the hardships, real or supposed, of particular cases to accomplish results, even if they be just results, in a mode forbidden by the fundamental law. The country should never be allowed to think that the Constitution can, in any case, be evaded or amended by mere judicial interpretation, or that its behests may be nullified by an ingenious construction of its provisions.

The importance of the question under consideration is a sufficient justification for such a reference to the authorities as will indicate the precise grounds on which this court has oftentimes proceeded when determining what is and what is not a suit against a State within the meaning of the eleventh amendment. All the cases agree in declaring the incapacity of a Federal court to exercise jurisdiction over a State as a party. But assaults upon the eleventh amendment have oftenest been made in cases in which the effort has been, without making the State a formal party, to control the acts of its officers and agents, by such orders directed to them as will accomplish by indirection the same results that could be accomplished by a suit directly against the State if such a suit were possible. It will be well to look at some of the principal adjudged cases.

The general question was examined in Cunningham *v.* Macon and Brunswick Railroad Company (109 U. S., 446–451), where the court said that it was conceded in all the cases, and " may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution." The court has not in any case departed from this constitutional principle. In Pennoyer *v.* McConnaughy (140 U. S., 1, 9) it said that " this immunity of a State from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the State within the reach of the process of the court. Accordingly it is equally well settled that a suit against the officers of a State to compel them to do the acts which constitute a performance by it of its contracts is, in effect, a suit against the State itself." In Cunningham *v.* Macon and Brunswick Railroad Company, just cited, the distinction was drawn between a suit in which the State is the real party in interest, although not technically a party on the record, and one in which " an individual is sued in tort for some act injurious to another in regard to person or prop-

erty, to which his defense is that he has acted under the orders of the government," in which last case, the court observed, the defendant "is not sued *as, or because he is*, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he *asserts* authority as such officer." Let it not be forgotten that the defendant Young was sued, not as an individual or because he had any personal interest in these matters, but *as, and solely because he is*, an officer of the State charged with the performance of certain public duties.

In Hagood *v.* Southern (117 U. S., 52, 67, 68), which involved the validity of certain scrip alleged to have been issued by the State of South Carolina, it appeared that the State having denied its obligation to pay, the plaintiff sought relief by simply suing certain State officers, as such, without making the State a formal party. The court said: "These suits are accurately described as bills for the specific performance of a contract between the complainants and the State of South Carolina, who are the only parties to it. But to these bills the State is not in name made a party defendant, though leave is given to it to become such if it chooses; and, except with that consent, it could not be brought before the court and be made to appear and defend. And yet it is the actual party to the alleged contract the performance of which is decreed, the one required to perform the decree, and the only party by whom it can be performed. Though not nominally a party to the record, it is the real and only party in interest, the nominal defendants being the officers and agents of the State, having no personal interest in the subject-matter of the suit and defending *only as representing the State.* And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the State. The State is not only the real party to the controversy, but the real party against which relief is sought by the suit, and the suit is, therefore, substantially within the prohibition of the eleventh amendment to the Constitution of the United States, which declares that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any foreign State.'" Again: "If this case is not within the class of those forbidden by the constitutional guaranty to the States of immunity from suits in Federal tribunals, it is difficult to conceive the frame of one which would be. If the State is named as a defendant, it can only be reached either by mesne or final process through its officers and agents, and a judgment against it could neither be obtained nor enforced, except as the public conduct and government of the ideal political body called a State could be reached and affected through its official representatives. A judgment against these latter, in their official and representative capacity, commanding them to perform official functions on behalf of the State according to the dictates and decrees of the court, is, if anything can be, a judicial proceeding against the State itself. If not, it may well be asked, what would constitute such a proceeding? In the present cases the decrees were not only against the defendants *in their official capacity*, but, that there might be no mistake as to the nature and extent of the duty to be performed, also against their successors in office." Is it to be said that an order

requiring the attorney-general of a State to perform certain official functions on behalf of the State is a suit against the State, while an order forbidding him, *as attorney-general*, not to perform an official function on behalf of the State is not a suit against the State?

The leading case upon the general subject, and one very similar in many important particulars to the present one, is In re Ayers. (123 U. S., 443, 496, 497, 505.) The facts in that case were briefly these: The legislature of Virginia, in 1887, passed an act which holders of sundry bonds and tax-receivable coupons of that Commonwealth alleged to be in violation of their rights under the Constitution of the United States. They instituted a suit in equity in the circuit court of the United States against the attorney-general and auditor of Virginia, and against the treasurers and Commonwealth attorneys of counties, cities, and towns in Virginia, the relief asked being a decree enjoining and restraining the said State officers, and each of them, from bringing or commencing any suit provided for by the above act of 1887, or from doing anything to put that act into operation. The circuit court entered an order enjoining the attorney-general of Virginia and each and all the State officers named "from bringing or commencing any suit against any person who has tendered the State of Virginia tax-receivable coupons in payment of taxes due to said State, as provided for and directed by the act of the legislature of Virginia, approved May 12, 1887." Subsequently the circuit court of the United States was informed that the attorney-general of Virginia had disobeyed its order of injunction. Thereupon that officer was ruled to show cause why he should not be fined and imprisoned. He responded to the rule, admitting that after being served with the injunction he had instituted a suit, in the State circuit court, against the Baltimore and Ohio Railroad Company to recover taxes due the State, and alleging "that he instituted the said suit because he was thereunto required by the act of the general assembly of Virginia aforesaid, and because he believed this court had no jurisdiction whatever to award the injunction violated." He disclaimed any intention to treat the court with disrespect, and stated that he had been actuated alone by the desire to have the law properly administered. He was, nevertheless, adjudged guilty of contempt, was required forthwith to dismiss the suit he had brought, was fined $500 for contempt of court, and committed *to the custody of the marshal* until the fine was paid, and until he purged himself of his contempt *by dismissing the suit in the State court.* The attorney-general then applied directly to this court for a writ of habeas corpus, which was granted, and upon hearing he was released by this court from custody. The order for his discharge recited that the suit in which the injunctions were granted was "in substance and in law a suit against the State of Virginia," and "within the prohibition of the eleventh amendment to the Constitution;" that it was one "to which the judicial power of the United States does not extend;" that the circuit court was without jurisdiction to entertain it; that all its proceedings in the exercise of jurisdiction were null and void; that it had no authority or power to adjudge the attorney-general in contempt; and that his imprisonment was without authority of law. In the opinion in the Ayers case the court said: "It follows, therefore, in the present case, that the personal act of the petitioners

sought to be restrained by the order of the circuit court, reduced to *the mere bringing of an action in the name of and for the State against taxpayers*, who, although they may have tendered tax-receivable coupons, are charged as delinquents, can not be alleged against them as an individual act in violation of any legal or contract rights of such taxpayers." Again: "The relief sought is against the defendants, not in their individual but *in their representative capacity as officers of the State of Virginia.* The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name and for its own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subject to the jurisdiction of the court by process served upon its governor and attorney-general, according to the precedents in such cases. (New Jersey *v.* New York, 5 Pet., 284, 288, 290; Kentucky *v.* Dennison, 24 How., 66, 96, 97; Rule 5 of 1884, 108 U. S., 574.) If a decree could have been rendered enjoining the State from bringing suits against its taxpayers it would have operated upon the State *only through the officers who by law were required to represent it in bringing such suits, viz, the present defendants, its attorney-general, and the Commonwealth's attorneys for the several counties.* For a breach of such an injunction, these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment thereof by attachment and imprisonment. The nature of the case, as supposed, is identical with that of the case as actually presented in the bill, with the single exception that the State is not named as a defendant. How else *can the State be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the court as an actual and real defendant?*" Further: "The very object and purpose of the eleventh amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the members of judicial tribunals without their consent, and in favor of individual interests. To secure the manifest purposes of the constitutional exemption guaranteed by the eleventh amendment requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover, not only suits brought against a State by name, but *those also against its officers, agents, and representatives where the State, though not named as such, is nevertheless the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates.* But this is not intended in any way to impinge upon the principle which justifies

suits against individual defendants, who, under color of the authority of unconstitutional legislation by the State, are guilty of *personal trespasses and wrongs*, nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, *and the act to be done or omitted is purely ministerial*, in the performance or omission of which the plaintiff has a legal interest."

It is said that the Ayers case is not applicable here, because the orders made by the Federal circuit court had for their object to compel Virginia to perform its contract with bondholders, which is not this case. But that difference between the Ayers case and this case can not affect the principle involved. The proceeding against the attorney-general of Virginia had for its object to compel, by indirection, the performance of the contract which that Commonwealth was alleged to have made with bondholders—such performance, on the part of the State, to be effected by means of orders in a Federal circuit court directly controlling the official action of that officer. The proceeding in the Perkins-Shepard suit against the attorney-general of Minnesota had for its object, by means of orders in a Federal circuit court, directed to that officer, *to control the action of that State* in reference to the enforcement of certain statutes by judicial proceedings commenced in its own courts. The relief sought in each case was to control the State *by controlling the conduct of its law officer, against its will.* I can not conceive how the proceeding against the attorney-general of Virginia could be deemed a suit against that State, and yet the proceeding against the attorney-general of Minnesota is not to be deemed a suit against Minnesota, when the object and effect of the latter proceeding was, beyond all question, to shut that State entirely out of its own courts, and prevent it through its law officer from invoking their jurisdiction in a special matter of public concern, involving official duty, about which the State desired to know the views of its own judiciary. In my opinion the decision in the Ayers case determines this case for the petitioner.

More directly in point, perhaps, for the petitioner, Young, is the case of Fitts *v.* McGhee (172 U. S., 516, 528, 529, 530). That suit was brought by the receivers of a railroad company against the governor and attorney-general of Alabama. Its object was to prevent the enforcement of the provisions of an Alabama statute prescribing the maximum rates of toll to be charged on a certain bridge across the Tennessee River. The statute imposed a penalty for each time that the owners, lessees, or operators of the bridge demanded or received any higher rate of toll than was prescribed by it. The relief asked was an injunction prohibiting the governor and attorney-general of the State and all other persons from instituting any proceeding against the complainants, or either of them, to enforce the statute. An injunction, as prayed for, was granted. In the progress of the cause the solicitor of the district in which the case was pending was made a defendant and the injunction was extended to him. By amended pleadings it was made to appear that the tollgate keepers at the public crossing of the bridge were indicted for collecting tolls in violation of the statute. In the progress of the cause the plaintiffs dismissed the case as to the State, and the cause was discontinued as to the governor. But the case was heard upon the motion to dismiss

the bill upon the ground that the suit was one against the State in violation of the Constitution of the United States.

After stating the principles settled in the Ayers case and in other cases this court said: "If these principles be applied in the present case there is no escape from the conclusion that, although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. *As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings*, in execution of the statute of February 9, 1895, *is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record.* If the individual defendants held possession or were about to take possession of, or to commit any trespass upon, any property belonging to or under the control of the plaintiffs, in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right to such possession by simply asserting that they held or were entitled to hold the property in their capacity as officers of the State. In the case supposed, they would be compelled to make good the State's claim to the property, and could not shield themselves against suit because of their official character. (Tindal *v.* Wesley, 167 U. S., 204, 222.) No such case is before us." Again, in the same case: "It is to be observed that neither the attorney-general of Alabama nor the solicitor of the eleventh judicial circuit of the State appear to have been charged by law with any special duty in connection with the act of February 9, 1895. In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were Poindexter *v.* Greenhow (114 U. S., 270), Allen *v.* Baltimore and Ohio Railroad (114 U. S., 311), Pennoyer *v.* McConnaughy (140 U. S., 1), In re Tyler (149 U. S., 164), Reagan *v.* Farmers' Loan and Trust Company (154 U. S., 362, 388), Scott *v.* Donald (165 U. S., 58), and Smyth *v.* Ames (169 U. S., 466). Upon examination it will be found that the defendants in each of those cases were officers of the State, especially charged with the execution of a State enactment alleged to be unconstitutional, but under the authority of which, it was averred, they were committing or were about to commit *some specific wrong or trespass* to the injury of the plaintiff's rights. There is a wide difference between a suit against individuals, holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and a *suit against officers of a State merely to test the constitutionality of a State statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State.* In the present case, as we have said, neither of the State officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and attorney-general, based upon the theory that the former as the executive of the State was, in a general sense, charged with the execution of all its laws, and the latter, as

attorney-general, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which can not be applied to the States of the Union consistently with the fundamental principle that they can not, without their assent, be brought into any court at the suit of private persons. If their officers commit acts of trespass or wrong to the citizen, they may be individually proceeded against for such trespasses or wrong. Under the view we take of the question, the citizen is not without effective remedy when proceeded against under a legislative enactment void for repugnancy to the supreme law of the land; for, whatever the form of proceeding against him, he can make his defense upon the ground that the statute is unconstitutional and void. And that question can be ultimately brought to this court for final determination." I am unable to distinguish that case, in principle, from the one now before us. The Fitts case is not overruled, but is, I fear, frittered away or put out of sight by unwarranted distinctions.

Two cases in this court are much relied on to support the proposition that the Perkins-Shepard suit in the circuit court is not a suit against the State. I refer to Reagan *v.* Farmers' Loan and Trust Company (154 U. S., 362) and Smyth *v.* Ames (169 U. S., 466, 472). But each of those cases differs in material respects from the one instituted by Perkins and Shepard in the court below. In the Reagan case it appears that the very act, under which the railroad commission proceeded, authorized the railroad company, or any interested party, if dissatisfied with the action of the commission in establishing rates, to bring suit against that commission in any court, in a named county, with right to appeal to a higher court. This court when combatting the suggestion that only the State court had jurisdiction to proceed against the commission, and give relief in respect of the rates it established, said: "It may be laid down as a general proposition that, whenever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal courts to maintain a like defense. A State can not tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the State to protect property rights, a citizen of another State may invoke the jurisdiction of the Federal courts. * * * It comes, therefore, within the very terms of the act. It can not be doubted that a State, like any other government, can waive exemption from suit." The declaration of the court in the Reagan case, that that suit was not, within the true meaning of the eleventh amendment, to be regarded as a suit against the State, must therefore be taken in connection with the declaration in the same case that the State having consented that the commission might be sued in one of its own courts, in respect of the rates established by the statute, must be taken to have waived its immunity from suit in the circuit court of the United States sitting in Texas. In Smyth *v.* Ames, above cited, which was a suit in a circuit court of the United States, involving the constitutional validity of certain rates established for railroads in Nebraska, it appeared that the statute expressly authorized any railroad company claiming

that the rates were unreasonable to bring an action *against the State* before the Supreme Court in the name of the railroad company or companies bringing the same. Thus the State of Nebraska waived its immunity from suit, and having authorized a suit against itself in one of its courts, in respect of the rates there in question, it could not, according to the decision in the Reagan case, deny its liability to like suit in a court of the United States. It is true that this court, in its opinion in Smyth *v.* Ames, did not lay any special stress on the fact that Nebraska, by the statute, agreed that it might be sued, but it took especial care in its extended statement of the case to bring out that fact. Its silence on that point is not extraordinary, in view of the fact, as appears from the opinion of this court, that the question whether that suit was to be deemed one against the State was not discussed at the bar by the Nebraska State board. We there quoted from the Reagan case these words: "Whenever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal courts to maintain a like defense. A State can not tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts." That the Reagan and Smyth cases did not go as far as is now claimed for them is made clear by the later case of Fitts *v.* McGhee, already referred to, in which the doctrines of In re Ayers were reaffirmed and applied.

We may refer in this connection to Gunter *v.* Atlantic Coast Line (200 U. S., 273, 291), in which case one of the points made was that the circuit court of the United States had no power to restrain the attorney-general of South Carolina and the counsel associated with him from prosecuting in the State courts actions authorized by the laws of the State, and hence that the court erred in awarding an injunction against said officers. This court said: "Support for the proposition is rested upon the terms of the eleventh amendment and the provisions of section 720 of the Revised Statutes, forbidding the granting of a writ by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. The soundness of the doctrine relied upon is undoubted. (In re Ayers, 123 U. S., 443; Fitts *v.* McGhee, 172 U. S., 516.) The difficulty is that the doctrine is inapplicable to this case. Section 720 of the Revised Statutes was originally adopted in 1793, whilst the eleventh amendment was in process of formation in Congress for submission to the States, and long, therefore, before the ratification of that amendment. The restrictions embodied in the section were, therefore, but a partial accomplishment of the more comprehensive result effectuated by the prohibitions of the eleventh amendment. Both the statute and the amendment relate to the power of courts of the United States to deal, against the will and consent of a State, with controversies between it and individuals. None of the prohibitions, therefore, of the amendment or of the statute relate to the power of a Federal court to administer relief in causes where jurisdiction as to a State and its officers has been acquired *as a result of the voluntary action of the State in submitting its rights to judicial determination.* To confound the two classes of cases is but to overlook the distinction which exists between the power of a court to deal

with a subject over which it has jurisdiction and its want of authority to entertain a controversy as to which jurisdiction is not possessed."

Counsel for the railway company placed some reliance on Pennoyer *v.* McConnaughy (140 U. S. 1, 18), in which the previous cases on the general subject of suits against the States were classified. That case was a suit in equity against certain parties "who, under the constitution of Oregon, as governor, secretary of state, and treasurer of that State, comprised the board of land commissioners of that State, to restrain and enjoin them from selling and conveying a large amount of land in that State, to which the plaintiff asserted title." That suit, in view of the nature of the relief asked, and of the relations of the defendants to the matters involved, was held not to be one against the State within the meaning of the eleventh amendment. But after a review of the facts the court, *as explanatory of the conclusion reached by it*, took especial care to observe: "In this connection it must be borne in mind that this suit is not nominally against the governor, secretary of state, and treasurer, *as such officers*, but against them collectively, as the board of land comsioners." The present suit is, in terms, against Young "as attorney-general of Minnesota," and the decree was sought against him, as such officer, not against him individually, or as a mere administrative officer charged with certain duties.

One of the cases cited in support of the decision now rendered is Missouri, Kansas and Texas Railway Company *v.* Missouri Railroad and Warehouse Commissioners. (183 U. S., 53, 58, 59.) But although that particular suit was held not to be one against the State, the case, in respect of the principles announced by the court, is in harmony with the views I have expressed. For, the court there says: "Was the State the real party plaintiff? It was at an early day held by this court, construing the eleventh amendment, that in all cases where jurisdiction depends on the party, it is the party named in the record. (Osborne *v.* United States Bank, 9 Wheat., 738.) But that technical construction has yielded to one more in consonance with the spirit of the amendment, and in In re Ayres (123 U. S., 443) it was ruled upon full consideration that the amendment covers not only suits against a State by name *but those also against its officers, agents, and representatives where the State, though not named as such, is nevertheless the only real party against which in fact the relief is asked, and against which the judgment or decree effectively operates.* And that construction of the amendment has since been followed." In the present case, the State, although not named on the record as a party, is the real party whose action it is sought to control.

There are other cases in this court in which the scope and meaning of the eleventh amendment were under consideration, but they need not be cited, for they are well known. They are all cited in In re Ayers (123 U. S., 443, 500). "The vital principle in all such cases," this court said in the Ayers case, "is that the defendants, though professing to act as officers of the State, are threatening a violation of the personal or property rights of the complainant, for which they are personally and individually liable," or cases in which the officer sued refused to perform a purely ministerial duty, about which he had no discretion and in the performance of which the

plaintiff had a direct interest. The case before us is altogether different. The statutes in question did not impose upon the attorney-general of Minnesota any special duty to see to their enforcement. In bringing the mandamus suit he acted, under the general authority inhering in him as the chief law officer of his State. He could not become personally liable to the railway company *simply because of his bringing the mandamus suit.* The attorney-general stated that all he did, or contemplated doing, was to bring the mandamus suit. The mere bringing of such a suit could not be alleged against him as an individual in violation of any legal right of the railway company or its shareholders. (In re Ayers, 123 U. S., 443, 496.) The plaintiffs recognized this fact and hence did not proceed in their suit upon the ground that the defendant was individually liable. They sued him only as attorney-general, and sought a decree against him in his official capacity, not otherwise.

Some reference has been made to Ex parte Royall (117 U. S., 241) and other cases that affirm the authority of a Federal court, under existing statutes, to discharge upon habeas corpus from the custody of a State officer one who is held in violation of the Federal Constitution for an alleged crime against a State. Those cases are not at all in point in the present discussion. Such a habeas corpus proceeding is ex parte, having for its object only to inquire whether the applicant for the writ is illegally restrained of his liberty. If he is, then the State officer holding him in custody is a trespasser, and can not defend the wrong or tort committed by him, by pleading his official character. The power in a Federal court to discharge a person from the custody of a trespasser may well exist, and yet the court have no power in a suit before it, by an order directed against the attorney-general of a State, as such, to prevent the State from being represented by that officer, as a litigant in one of its own courts. The former cases, it may be argued, come within the decisions which hold that a suit which only seeks to prevent or restrain a trespass upon property or person by one who happens to be a State officer, but is proceeding in violation of the Constitution of the United States, is not a suit against a State within the meaning of the eleventh amendment, but a suit against the trespasser or wrongdoer. But the authority of the Federal court to protect one against a trespass committed or about to be committed by a State officer in violation of the Constitution of the United States is very different from the power now asserted, and recognized by this court as existing, to shut out a sovereign State from its own courts by the device of forbidding its attorney-general, under the penalty of fine and imprisonment from appearing in such courts in its behalf. *The mere bringing of a suit on behalf of a State, by its attorney-general,* can not, this court has decided in the Ayers case, make that officer a trespasser and individually liable to the party sued. To enjoin him from representing the State in such suit is therefore, for every practical or legal purpose, to enjoin the State itself. This court in the Debs case (158 U. S., 564, 584) said: "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in

the matter. The obligation which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court. This proposition in some of its relations has heretofore received the sanction of this court." If there be one power that a State possesses, which ought to be deemed beyond the control, in any mode, of the National Government or of any of its courts, it is the power *by judicial proceedings* to appear in its own courts, by its law officer or by attorneys, and seek the guidance of those courts in respect of matters of a justiciable nature. If the State court, by its judgment, in such a suit, should disregard the injunctions of the Federal Constitution, that judgment would be subject to review by this court upon writ of error or appeal.

It will be well now to look at the course of decisions in other Federal courts.

Attention is first directed to Arbuckle *v.* Blackburn (113 Fed. Rep., 616, 622), which was a suit in equity, one of the principal objects of which was to restrain the enforcement of an act of the Ohio legislature relating to food products, particularly of a named coffee in which the plaintiffs were interested. The circuit court of appeals held that the bill was properly dismissed, saying, among other things: "What, then, is the object of the injunction sought in this case? It is no more or less than to restrain the officer of the State from bringing prosecutions for violations of an act which said officer is expressly charged to enforce in the only way he is authorized to proceed—by bringing criminal prosecutions in the name of the State. This is virtually to enjoin the State from proceeding through its duly qualified and acting officers. If the food commissioner may be enjoined from instituting such prosecutions, why may not the prosecuting attorney, or any officer of the State charged with the execution of the criminal laws of the State? While the State may not be sued, if the bill can be sustained against its officers, it is as effectually prevented from proceeding to enforce its laws as it would be by an action directly against the State. This view of the case, in our judgment, is amply sustained by the cases above cited, and by the latter case of Fitts *v.* McGhee (172 U. S., 516). In so far as this action seeks an injunction against the respondent from proceeding to enforce by prosecution the provisions of the Statutes of Ohio above cited, the courts of the United States are deprived of jurisdiction by the eleventh amendment to the Constitution."

In Union Trust Company *v.* Stearns (119 Fed Rep., 790, 791, 792, 795) the circuit court of the United States for the district of Rhode Island had occasion to consider the scope of the eleventh amendment. The case related to a statute regulating the hours of labor of certain employees of street railways, and imposing a fine for a violation of its provisions. The court upon an elaborate review of all the cases in this court dismissed the action. The defendants Stearns and Greenough were, respectively, the attorney-general and assistant attorney-general of the State. They were not named in the act, nor charged with any special duty in connection therewith. The court said: "The purpose of the present bill, in substance and effect, is to enjoin the State of Rhode Island from the enforcement of a penal statute. Indictments under the act are brought in the name and on behalf of the State for the protection of the State. These

defendants, the attorney-general and his assistant, merely represent the State in such proceedings. They are simply the officers and agents of the State. It is not as individuals, but solely by virtue of their holding such offices, that they prefer and prosecute indictments in the name of the State. A State can only act or be proceeded against through its officers. If a decree could be entered against the State of Rhode Island enjoining prosecutions under this act, it could only operate against the State through enjoining these defendants. An order restraining the attorney-general and his assistant from the enforcement of this statute is an order restraining the State itself. The present suit, therefore, is as much against the State of Rhode Island as if the State itself were named a party defendant." After referring to In re Ayers and Fitts *v.* McGhee, and upon a review of the cases, the court proceeded: "The defendants Stearns and Greenough hold no special relation to the act of June 1, 1902. They are not specially charged with its execution. They are not thereby constituted a board or commission with administrative powers, nor are they as individuals, and apart from the official authority under which they act, threatening to seize the property of the complainant, or to commit any wrong or trespass against its personal or property rights. They have no other connection with this statute than the institution of formal judicial proceedings for its enforcement in the courts of the State in the name and behalf of the State. Upon reason and authority the present bill is a suit against the State of Rhode Island, within the meaning of the eleventh amendment to the Constitution of the United States."

In Morenci Copper Company *v.* Freer (127 Fed. Rep., 199, 205), which was an action in equity to restrain and inhibit the defendant, in his official capacity as attorney-general of West Virginia, from proceeding to institute an action in the State court for forfeiture of the charter of the plaintiff corporation for a failure to pay a license tax imposed by a State statute, and which statute was alleged to be in violation of the Federal Constitution, the circuit court reviewed the decision of this court upon the question as to what and what were not suits against the State. The circuit court held that it had no jurisdiction of the case, saying: "But it may be said, if the court holds that no remedy of this sort will lie in the circuit court of the United States to prevent this breach of a contract by the State of West Virginia by means of the machinery of a law violative of the Constitution of the United States, how are the rights of corporations to be preserved? The answer is that such alleged unconstitutionality is matter of defense to any suit brought for the forfeiture of complainant's charter, and could be set up as an answer and defense to any bill brought for that purpose, and, if the highest court of the State ruled adversely to that contention, appeal would lie to the Supreme Court of the United States. Or the case can be removed to the circuit court of the United States if it presents a case arising under the Constitution or laws of the United States."

A well-considered case is that of Western Union Telegraph Company *v.* Andrews (154 Fed. Rep., 95, 107). In that case the telegraph company sought by bill to enjoin the prosecuting attorneys of the various judicial circuits of Arkansas from instituting any proceeding for penalties for its failure or refusal to comply with the provisions of an act of the legislature of Arkansas relating to foreign

corporations doing business in that State and fixing fees, etc. The bill charged that the various prosecuting attorneys would, unless restrained, institute numerous actions for the recovery of the penalties prescribed by the act, which was no less than $1,000 for each alleged violation. The defense was, among other things, that the action was one against the State, and therefore prohibited by the Constitution. After a careful review of the adjudged cases in this court and in the subordinate Federal courts the circuit court held the action to be one against the State, forbidden by the eleventh amendment, saying, among other things: "The allegations in the bill show that this is an attempt to prevent the State of Arkansas, through its officers, who by its laws are merely its attorneys, to represent it in all legal actions in its favor or in which it is interested, from instituting and prosecuting suits for the recovery of penalties incurred for alleged violation of its laws, actions which can only be instituted in the name of the State and for its use and benefit."

Upon the fullest consideration and after a careful examination of the authorities, my mind has been brought to the conclusion that no case heretofore determined by this court requires us to hold that the Federal circuit court had authority to forbid the attorney-general of Minnesota from representing the State in the mandamus suit in the State court, or to adjudge that he was in contempt and liable to be fined and imprisoned simply because of his having, as attorney-general, brought that suit for the State in one of its courts. On the contrary, my conviction is very strong that, if regard be had to former utterances of this court, the suit of Perkins and Shepard in the Federal court, in respect of the relief sought therein against Young, in his official capacity as attorney-general of Minnesota, is to be deemed—under the Ayers and Fitts cases particularly—a suit against the State of which the circuit court of the United States could not take cognizance without violating the eleventh amendment of the Constitution. Even if it were held that suits to restrain the instituting of actions directly to recover the prescribed penalties would not be suits against the State, it would not follow that we should go further and hold that a proceeding under which the State was, in effect, denied access, by its attorney-general, to its own courts, would be consistent with the eleventh amendment. A different view means, as I think, that although the judicial power of the United States does not extend to any suit expressly brought against a State by a citizen of another State without its consent or to any suit the legal effect of which is to tie the hands of the State, although not formally named as a party, yet a circuit court of the United States, in a suit brought against the attorney-general of a State, may, by orders directed specifically against that officer, control, entirely control, by indirection, the action of the State itself in judicial proceedings in its own courts involving the constitutional validity of its statutes. This court has heretofore held that that could not be done, and that such a result would, for most purposes, practically obliterate the eleventh amendment and place the States, in vital particulars, as absolutely under the control of the subordinate Federal courts as if they were capable of being directly sued. I put the matter in this way, because to forbid the attorney-general of a State (under the

penalty of being punished as for contempt) from representing his State in suits of a particular kind, in its own courts, is to forbid the State itself from appearing and being heard in such suits. Neither the words nor the policy of the eleventh amendment will, under our former decisions, justify any order of a Federal court the necessary effect of which will be to exclude a State from its own courts. Such an order attended by such results can not, I submit, be sustained consistently with the powers which the States, according to the uniform declarations of this court, possess under the Constitution. I am justified, by what this court has heretofore declared, in now saying that the men who framed the Constitution and who caused the adoption of the eleventh amendment would have been amazed by the suggestion that a State of the Union can be prevented by an order of a subordinate Federal court from being represented by its attorney-general in a suit brought by it in one of its own courts; and that such an order would be inconsistent with the dignity of the States as involved in their constitutional immunity from the judicial process of the Federal courts (except in the limited cases in which they may constitutionally be made parties in this court), and would be attended by most pernicious results.

I dissent from the opinion and judgment.

Dissent.

Supreme Court of the United States. No. 474.—October term, 1907. Thomas F. Hunter, sheriff of Buncombe County, State of North Carolina, appellant, v. James H. Wood. Appeal from the circuit court of the United States for the western district of North Carolina. March 23, 1908.

James H. Wood, the appellee, being one of the ticket agents of the Southern Railway Company, was, on July 17, 1907, charged in the police justice's court of the city of Asheville, in the county of Buncombe, in the State of North Carolina, with unlawfully and willfully overcharging one, T. J. Harmon, for a railroad ticket from Asheville, N. C., to Canton, N. C., in violation of the State law. He was arrested and brought before the court, and on the trial, July 18, 1907, was convicted and sentenced by the court to imprisonment in the county jail of Buncombe County for the term of thirty days, to be worked on the public roads of that county for that time, and to pay all costs.

The appellee applied to the United States circuit judge in the western district of North Carolina for a writ of habeas corpus to be directed to Hunter, appellant, as sheriff of Buncombe County, to inquire into the cause of his detention and to obtain his discharge. The writ was issued, and, after a hearing, the circuit judge discharged the apellee from imprisonment, and directed that a copy of the order of the discharge should be certified to the police justice's court of the city of Asheville and to the sheriff of Buncombe County, in whose custody the petitioner then was. (Ex parte Wood, 155 Fed., 190.)

It appeared that prior to the passage in 1907 of the acts of the North Carolina legislature in relation to passenger and freight rates on railroads within the State the Southern Railway Company were

charging the rates then allowed by law. After the passage of the acts above mentioned, which greatly reduced the rates of compensation for the transportation of both passengers and freight, the Southern Railway Company commenced a suit in equity in the circuit court of the United States for the western district of North Carolina against the corporation commission and the attorney-general and assistant attorney-general of the State, to enjoin the taking of any proceedings or the commencement of any suits or actions to enforce the acts in question or to recover penalties for the disobedience of such acts by the company. The bill alleged that the acts were unconstitutional, and that if the rates were enforced the result would be to prevent the company earning anything upon its investment, and deprive it of its property without due process of law, and deny it the equal protection of the laws, contrary to the fourteenth amendment to the Constitution of the United States. The bill also averred that a duty rested upon the corporation commission and the attorney-general and assistant attorney-general to take such proceedings as they might deem expedient for the enforcement of the acts, and that the corporation commission would, for the purpose of putting the acts into effect, do those things which it was provided should be done, and in case of continuous refusal on the part of the company to charge only the rate specified the attorney-general and his assistant would proceed to enforce the same as prescribed in the acts.

The circuit judge upon this bill granted an interlocutory injunction, until the further order of the court, against the members of the corporation commission and the attorney-general and assistant attorney-general, restraining them from taking any proceedings toward the enforcement of the acts, or putting the acts in respect to frieght charges or passenger rates, or any part or either of the acts, into effect, and from prosecuting any suit or action, civil or criminal, against the railway company, its officers, agents, or employees. The order also provided for the execution of a bond on the part of the railway company in the sum of $325,000, conditioned to pay into the registry of the court from time to time, as the court might order, such sums of money as should be equal to the difference between the aggregate freight and passenger rates and excess baggage charges, charged and received by the company for intrastate service on its lines in the State of North Carolina, and what would have been the aggregate amounts for such service at the rates fixed in or under the acts of the assembly above mentioned. The order provided a method of procedure by giving to each purchaser of a ticket a coupon for the payment of the difference stated, on presenting the coupon to the registry clerk, if the act should be finally held valid.

Section 4 of the act of the legislature, prescribing the maximum charges for the transportation of passengers in North Carolina, enacted that any railroad company violating the provisions of the act should be liable to a penalty of $500 for each violation, payable to the person aggrieved, recoverable in an action in his name in any court of competent jurisdiction in the State; and any agent, servant, or employee of a railroad company violating the act was declared guilty of a misdemeanor, and, upon conviction, was to be punished by fine or imprisonment, or both, in the discretion of the court. The act in relation to freight, by the second section, provided that if the com-

pany should make charges for the shipment of freight in violation of the act it should be guilty of a misdemeanor, and, upon conviction, fined not less than $100, and the officer or agent should be fined or imprisoned, or both, in the discretion of the court.

Upon the hearing of the motion for an injunction, after granting the same, the circuit judge wrote an opinion (155 Fed., 756), in which he reached the conclusion that section 4 of the act in regard to passenger rates was on its face unconstitutional and void.

Notwithstanding the fact that an injunction had been granted, proceedings were thereafter taken against the appellee, a ticket agent of the company, to punish him for not complying with the act in relation to the sale of tickets, resulting in his conviction, as already stated.

The sheriff of Buncombe County, in whose custody the appellee was restrained, duly appealed to this court from the order discharging the appellee from his custody.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the court.

After the jurisdiction of the circuit court of the United States had attached by the filing of the bill of complaint in the case already mentioned, of the Southern Railway Company *v.* McNeil and others, members of the corporation commission, and after the issuing and service of the injunction, as above stated, the defendant, Wood, acting under and in obedience to the provisions of such injunction, sold the railroad tickets at the usual price and at the same time complied with the conditions contained in the injunction by giving the coupons for the difference in price, and while so complying with the terms of such injunction was arrested and proceeded against criminally for disobedience of the act fixing rates. Being detained in custody by virtue of this conviction by one of the police courts of the State, he had the right to apply for a writ of habeas corpus to the United States circuit judge, and that judge had power to issue the writ and discharge the prisoner under section 753 of the Revised Statutes of the United States (1 U. S. Comp. Stat., p. 592), as he was then in custody for an act done pursuant to an order, process, or decree of a court or judge of the United States. (See In re Neagle, 135 U. S., 1.) The writ being properly issued, the judge had the right, and it was his duty, to examine into the facts, and had jurisdiction to discharge the petitioner under the circumstances stated.

The other questions raised herein have been sufficiently discussed in Ex parte Young, just decided, and require no further attention.

For the reasons given in that opinion, the order appealed from herein must be affirmed.

Supreme Court of the United States. No. 474.—October term, 1907.

Thomas F. Hunter, sheriff of Buncombe County, State of North Carolina, appellant, *v.* James H. Wood. Appeal from the circuit court of the United States for the western district of North Carolina. March 23, 1908.

Mr. Justice HARLAN, dissenting.

In my judgment the appellee should have been put to his writ of error for the review of the judgment against him in the highest court of the State competent under the State laws to reexamine that judg-

ment, thence to this court to inquire whether any right belonging to him under the Federal Constitution had been violated. He should not have been discharged on habeas corpus. Ex parte Royall (117 U. S., 241), Minnesota *v.* Brundage (180 U. S., 499), Urquhart *v.* Brown (205 U. S., 179), and authorities cited in each case.

Upon the question as to what is and what is not a suit against the State within the meaning of the eleventh amendment, my views are fully expressed in my dissenting opinion in Ex parte Young, just decided. For the reasons there stated I dissent from the opinion and judgment of the court in this case.

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 411.

CITY OF NASHVILLE, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE CITY OF NASHVILLE, TENNESSEE, AGAINST THE UNITED STATES.

MARCH 30, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, March 28, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13179. City of Nashville v. The United States.]

STATEMENT OF CASE.

The above-entitled claim for rent of the Howard, Hume, and Hynes school buildings, of the city of Nashville, Tenn., occupied by the Federal troops during the war for the suppression of the rebellion, was first referred to the court by resolution of the United States Senate March 2, 1907, under the Tucker Act, and was No. 13142, Congressional, but was, on January 13, 1908, dismissed for want of jurisdiction.

Thereafter, on January 29, 1908, the following bill was referred to the court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act:

"A BILL For the relief of the city of Nashville, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the mayor and council of the city of Nashville, in the State of Tennessee, the sum of twenty-nine thousand one hundred and fifty dollars, for the use and occupation of and damage to the public school buildings of said municipality by the military authorities and forces of the United States during the civil war."

The said city of Nashville, Tenn., through its attorney, appeared and filed its petition in this court on February 11, 1908, in which the following allegations in substance are made:

That the Howard, Hume, and Hynes public school buildings were continuously occupied and used as military hospitals of the United States from sundry times in the

year 1862 down to and after the close of hostilities; that the fixed or agreed rentals were paid in full for said three buildings up to and including the year 1863; beginning on the 1st day of January, 1864, the rentals were fixed by the Federal authorities as follows: Howard school, $225 per month; Hume school, $150 per month, and Hynes school, $125 per month; no payments have been made from the last of December, 1863; the Howard and Hynes schools were continuously occupied to the end of June, 1865, and the Hume school to the end of July, 1865, all of which amounts to the sum of $9,150.

The case was brought to a hearing March 10, 1908. James H. Embry and Charles F. Benjamin, esqs., appeared for the claimant, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Commencing at sundry times in the year 1862 the Howard, Hume, and Hynes public school buildings, in the city of Nashville, Tenn., were occupied by the military forces of the United States, by proper authority, for the use of the Army, using the same for hospital and other purposes. The Howard and Hynes buildings were so used and occupied continuously from the year 1862 up to and including June 30, 1865, and the Hume building to July 31, 1865.

The city of Nashville was paid by the United States for such use and occupation at the rate of $200 per month for the Howard Building, $125 per month for the Hume Building, and $100 per month for the Hynes Building up to and including December 31, 1863, after which no rent was allowed because of instructions from the office of the Quartermaster-General relating to public buildings.

II. Under Special Orders, No. 28, dated Nashville, Tenn., a board of officers was constituted by Maj. Gen. U. S. Grant to fix the rent for houses in the city of Nashville occupied by the United States as hospitals, etc., which fixed the rental value of all buildings so used and occupied by the United States at the rate of 6 per cent on the assessed value of 1860 and 1861, and where no assessment could be ascertained, the same rate on the appraised value of the property.

Under said rating said board fixed the rental value, commencing January 1, 1864, of the Howard Building at $225 per month, the Hume Building at $150 per month, and the Hynes Building at $125 per month, an increase of $25 per month for each building. The rent for said buildings at said rate from January 1, 1864, until June and July, 1865, when the same were turned over to the authorities of the city of Nashville, amounted to the sum of $9,150, no part of which appears to have been paid.

III. No evidence has been introduced on the subject of loyalty of the claimant other than the insurrectionary character of the State of Tennessee, of which the court takes judicial notice.

IV. Said claim was never presented to any Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory evidence is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed March 23, 1908.
A true copy.
Test this 27th day of March, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 412.

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN PRAYING FOR THE ENACTMENT OF LEGISLATION TO REQUIRE COMMON CARRIERS TO EQUIP THEIR LOCOMOTIVES WITH AUTOMATIC SELF-DUMPING ASHPANS; AND ALSO FOR THE PASSAGE OF THE SO-CALLED LA FOLLETTE-STERLING EMPLOYERS' LIABILITY BILL, ETC.

MARCH 31, 1908.—Referred to the Committee on Interstate Commerce and ordered to be printed.

WASHINGTON, D. C., *March 31, 1908.*

SIR: The undersigned, a committee representing a union meeting composed of 1,000 delegates representing the Brotherhood of Locomotive Firemen and Enginemen from 30 States, held at Masonic Temple, Washington, D. C., March 30, 1908, respectfully submit for the consideration of the Senate the following memorial adopted by said meeting:

Resolved, That we favor the early consideration and passage by Congress of the Hemenway-Graff bill, requiring common carriers to equip their locomotives with automatic self-dumping ash pans, thereby doing away with the necessity of men exposing themselves to danger by being compelled to go under locomotives.

Resolved, That we favor the passage by Congress of the La Follette-Sterling employers' liability bill, as against the Knox bill. The former being broad in its application and plain and explicit in its terms, thereby furnishing protection to a greater number of employees and their families, and being capable of intelligent understanding by those who would benefit by its provisions; while the latter bill is limited in its scope, less liberal to the employees, and contains principles which are experimental and untried in legislation, and which would not be understood by many affected by it.

Resolved, That we are unalterably opposed to the passage of the Townsend bill, entitled "A bill to provide for the investigation of controversies affecting interstate commerce," as we believe said bill aims at governmental regulation and control of labor disputes, is a step toward compulsory arbitration, and therefore threatens our liberties, both as employees and citizens.

Resolved, That we view with increasing alarm the steady and gradual encroachment upon our liberties by Federal judges through the abuse of the power of injunction in labor disputes, such power having already been extended so as to prevent workingmen from striking and from organizing. We protest against this abuse, and demand the passage by Congress of such legislation as will preserve to us our civil rights and prevent the abuse of such power in the future.

Respectfully submitted.

JOHN M. HALL,
WILLIAM A. CAHOON,
Committee.

Hon. CHARLES W. FAIRBANKS,
President of the Senate, Washington, D. C.

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 414.

ADDING U. S. S. MAINE TO LIST OF VESSELS REQUIRING GENERAL OVERHAULING.

LETTER

FROM

THE ACTING SECRETARY OF THE NAVY,

REQUESTING

THAT THE NAME OF THE U. S. S. MAINE BE ADDED TO THE LIST OF VESSELS SUBMITTED IN LETTER OF FEBRUARY 11, 1908, WHICH REQUIRE GENERAL OVERHAULING TO THE EXTENT OF $200,000 OR MORE DURING THE FISCAL YEAR ENDING JUNE 30, 1909.

APRIL 1, 1908.—Referred to the Committee on Naval Affairs and ordered to be printed.

NAVY DEPARTMENT,
Washington, March 31, 1908.

SIR: Referring to the letter of this Department of the 11th ultimo, forwarding, pursuant to the provision contained in the naval appropriation act approved March 2, 1907, under the caption "Bureau of Construction and Repair," subhead "Construction and repair of vessels," a list of vessels requiring general overhauling to the extent of $200,000 or more during the fiscal year ending June 30, 1909, or repairs during the same period which in the aggregate under all bureaus will probably exceed 20 per cent of the total value of each of said vessels, I have the honor to request that the name of the U. S. S. *Maine* be added to the above-mentioned list, as that vessel will require new boilers, general overhauling, and repairs to machinery installed, at a total cost of more than $200,000.

Very respectfully, TRUMAN H. NEWBERRY,
Acting Secretary.

The PRESIDENT OF THE UNITED STATES SENATE.

O

60TH CONGRESS, 1st Session. } SENATE. {DOCUMENT No. 416.

FIRST BAPTIST CHURCH, SUFFOLK, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF FIRST BAPTIST CHURCH, OF SUFFOLK, VA., AGAINST THE UNITED STATES.

APRIL 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 1, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11031. First Baptist Church of Suffolk, Va., v. The United States.]

STATEMENT OF CASE.

In the above-entitled claim for the use, occupation, and damage to the interior fittings of the building known as the First Baptist Church of Suffolk, Va., by the military forces of the United States during the late civil war, a bill was introduced in the Fifty-seventh Congress for the relief of the claimant church, being Senate bill 1533. Said bill reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the First Baptist Church, Suffolk, Virginia, one thousand four hundred and fifty dollars, the same being in full for, and the receipt of the same to be taken and accepted in full and final discharge of, its claims for the occupancy of and damage to the church building by the military forces of the United States during the late war between the States and for which no payment has been made."

Said bill was referred to this court by resolution of the Senate on the 3d day of March, 1903, for findings of fact under the terms of the act approved March 3, 1887, commonly known as the Tucker Act.

The case was brought to a hearing on loyalty and merits on the 26th day of March, 1908, George A. & William B. King, esqs., appearing for the claimant, and the

Attorney-General, by P. M. Cox, esq., his assistant and under his direction, appearing for the defense and protection of the interests of the United States.

The claimant in its petition makes the following allegations:

I. That the First Baptist Church, of Suffolk, Va., is an ecclesiastical corporation duly organized and existing under the laws of the State of Virginia; that during the war for the suppression of the rebellion the said corporation, as such, did not give any aid or comfort to the said rebellion, but was, throughout the war, loyal to the Government of the United States, and that said church corporation were the owners of a certain church edifice, situated in the town of Suffolk, Va.

II. That said church edifice was occupied by the United States troops and used as barracks and hospital from about the month of April, 1862, until the close of the war, and that while so occupied said church edifice was greatly defaced and damaged as the result of said occupation; that no rent was paid by the United States troops for the use of the building; and that there is now due from the United States as damages for the injuries to the church building and as rent the sum of $1,450.

III. That no claim was ever presented to the United States for the use, occupation, and damage to said church property, except as hereinbefore stated.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The First Baptist Church, of Suffolk, Va., as a church, was loyal to the Government of the United States through the late civil war.

II. During said war the military forces of the United States, by proper authority, for the use of the Army, took possession of the church building described in the petition and used and occupied the same at various times as a hospital and barracks and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any Department or officer of the Government prior to its presentation to Congress and reference to this court by the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory reason is shown why the same was not earlier presented.

By the Court.

Filed March 30, 1908.
A true copy.
Test this 1st day of April, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 417.

ACKNOWLEDGING RECEIPT OF SENATE RESOLUTION CALLING FOR REPORT UPON POLICEMEN'S AND FIREMEN'S RELIEF FUNDS, ETC.

LETTER FROM THE PRESIDENT OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA ACKNOWLEDGING THE RECEIPT OF THE SENATE RESOLUTION DIRECTING THE COMMISSIONERS TO SUBMIT TO THE SENATE IN DECEMBER, 1908, A COMPLETE REPORT UPON THE POLICEMEN'S AND FIREMEN'S RELIEF FUNDS, ETC.

APRIL 2, 1908.—Referred to the Committee on the District of Columbia and ordered to be printed.

OFFICE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, March 31, 1908.

SIR: The Commissioners of the District of Columbia have the honor to acknowledge the receipt of the following resolution of the Senate:

Resolved, That the Commissioners of the District of Columbia be, and they are hereby, directed to submit to the Senate at the opening of the session of Congress in December, nineteen hundred and eight, a complete report upon the policemen's and firemen's pension relief funds, showing the amount of money expended from each fund each year since the funds were created, together with a list of persons drawing relief under each fund, the amount thereof, the disability therefor, or if a widow or child the cause of death of the husband or father; also a statement of such relief and pension systems in other cities, together with any recommendation the Commissioners may have for legislation looking toward the reorganization of the entire system of pension and relief for the police and fire departments of the District of Columbia.

Very respectfully,

HENRY B. F. MACFARLAND,
President Board of Commissioners, District of Columbia.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 418.

CONSISTORY OF GRACE REFORMED CHURCH, KNOXVILLE, MD.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF THE CONSISTORY OF GRACE REFORMED CHURCH, OF KNOXVILLE, MD., AGAINST THE UNITED STATES.

APRIL 6, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 3, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13044. Consistory of Grace Reformed Church, of Knoxville, Md., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7278, Fifty-ninth Congress, second session.]

"A BILL For the relief of the consistory of Grace Reformed Church, of Knoxville, Maryland.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the consistory of Grace Reformed Church, of Knoxville, Maryland, the sum of six hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said consistory of said church appeared in this court April 30, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the building and grounds of the Grace Reformed Church of Knoxville, Md., and used and occupied the same as a hospital for a considerable period, and

its property was greatly damaged thereby; that a reasonable rental value of said property during such occupation, including the repairs necessary to restore said property to the same condition in which it was before such occupation, was the sum of $600, for which no payment has been made; that the claimant has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

The case was brought to a hearing on loyalty and merits on the 12th day of March, 1908.

Messrs. Coldren & Fenning appeared for the claimant, and the Attorney-General, by M. L. Blake, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides makes the following

FINDINGS OF FACT.

I. The Grace Reformed Church, of Knoxville, Md., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States, by proper authority, for the use of the Army, took possession of the church building described in the petition and used and occupied the same for hospital purposes for a short period of time and damaged the same. The reasonable rental value, together with damage in excess of ordinary wear and tear, was then and there the sum of four hundred and ten dollars ($410), no part of which appears to have been paid.

III. The claim herein was never presented to any officer or department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as hereinbefore set forth, and no satisfactory reason is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed March 30, 1908.
A true copy.
Test this 3d day of April 1908.
[SEAL.]

JOHN RANDOLPH.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 419.

SLOOP PRUDENT.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF SLOOP PRUDENT, MATTHEW KEMP, MASTER, AGAINST THE UNITED STATES.

APRIL 6, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., April 4, 1908.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel sloop *Prudent*, Matthew Kemp, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. French spoliations. (Act of January 20, 1885, 23 Stat. L., 283; vol. 1, supplement to R. S., 2d ed., 471.) Vessel sloop *Prudent*, Matthew Kemp, master.]

No. of case.	Claimant.
2172.	David Stewart and John E. Semmes, receivers of the Maryland Insurance Company, *v.* The United States.
1305.	The President and Directors of the Insurance Company of North America *v.* The United States.

CONCLUSIONS OF FACT.

These cases were tried before the Court of Claims on the 22d day of March, 1892. The claimants were represented by Messrs. Earle & Duane, and the United States, defendants, by the Attorney-General, through his assistants in the Department of Justice, Alex. C. Moore and Chas. W. Russell, with whom was Assistant Attorney-General John B. Cotton.

The court, upon the evidence and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows:

I. The American sloop *Prudent*, of Tappahannock, Va., whereof one Matthew Kemp was master, sailed upon a commercial voyage from Fredericksburg to Cape François, in the month of June, 1797, laden with a cargo of flour, the property of Hazlewood Farish, a citizen of the United States; said ship was pursuing said voyage when she was forcibly seized and captured on the high seas on the 9th of July, 1797, by the French privateer called *l'Eclantant*, Capt. Fortise Moustier, taken into Port

de Paix, and vessel and cargo libeled, condemned, and sold as a prize by the French Prize Tribunal sitting at Cape François.

II. Upon the 14th day of June, 1797, Hazlewood Farish, the owner of said cargo, caused a policy of insurance to be effected thereon, for the voyage aforesaid, for his account, in the office of the Maryland Insurance Company, to the amount of $4,700, which said sum the said company paid the insured by reason of a total loss on account of said capture. Said cargo consisted of flour.

III. No assignment of said claim has been made or indemnity or compensation received on account of said loss other than herein stated.

The Maryland Insurance Company was duly incorporated under the laws of the State of Maryland and authorized to carry on the business of marine and oth r insurance. David Stewart and John E. Semmes are the duly appointed receivers of said company, and represent the stockholders of the company in 1843, when it expired. The company was then solvent.

IV. The said Farish insured in $500 the freight of said ship in the office of the Insurance Company of North America by said company, and said company upon the policy issued by it paid the sum of $490 as a total loss.

The said Farish who procured said insurance was at the time of taking the same a citizen of the United States.

Said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803, and were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants in their representative capacity are the owners of said claims, which have never been assigned except as aforesaid.

CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

2172. David Stewart and John E. Semmes, receivers of the Maryland Insurance Company, the sum of four thousand and seven hundred dollars ($4,700).

1305. The president and directors of the Insurance Company of North America the sum of four hundred and ninety dollars ($490).

BY THE COURT.

Filed March 28, 1892.
A true copy.
Test this 4th day of April, 1908.
[SEAL.]

JOHN RANDOLPH.
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 420.

REQUESTING RETURN TO COURT OF CLAIMS OF CASE OF LOUISE STEWART.

LETTER FROM THE CHIEF JUSTICE OF THE COURT OF CLAIMS TRANSMITTING A LETTER FROM THE ASSISTANT ATTORNEY-GENERAL REQUESTING THAT THE CASE OF LOUISE STEWART, WIDOW, AGAINST THE UNITED STATES, NO. 10102, CONGRESSIONAL, BE RETURNED TO THE COURT FOR FURTHER PROCEEDINGS.

APRIL 6, 1908.—Referred to the Committee on Claims and ordered to be printed.

CHAMBERS UNITED STATES COURT OF CLAIMS,
Washington, D. C., April 3, 1908.

SIR: I have the honor to transmit herewith a letter from Hon. John Q. Thompson, Assistant Attorney-General having charge of the defense of cases on behalf of the Government in the Court of Claims, wherein he requests that the case of Louise Stewart, widow *v.* The United States, No. 10102 Congressional, be returned to the court for further proceedings on the ground, as he states, that "the facts are that the case should not have been requested to be placed upon the calendar for dismissal by this office because it did not fall within the scope of said Rule 93."

Therefore, in compliance with his request I ask that said case be returned to the court for such further proceedings as to the court may be deemed just and proper.

I have the honor to be, yours, respectfully,

STANTON J. PEELLE,
Chief Justice

Hon. CHARLES W. FAIRBANKS,
President United States Senate.

DEPARTMENT OF JUSTICE,
Washington, April 2, 1908.

SIR: I have the honor to call your attention to the case of Louise Stewart, widow, *v.* The United States, No. 10102 Congressional. This case was dismissed under Rule 93 on motion and application of the Assistant Attorney-General along with a large list of cases dismissed at the same time. The facts are that the case should not have been requested to be placed upon the calendar for dismissal by this office because it did not fall within the scope of said Rule 93. In view of this

fact it would seem but equitable that the findings of the court be recalled for further proceedings, especially as I am assured by counsel for the claimant that he is ready to proceed with the prosecution of the case as soon as it shall be again before the court.

Very respectfully,

JOHN Q. THOMPSON,
Assistant Attorney-General.

Hon. STANTON J. PEELLE,
Chief Justice, Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 421.

REPORT ON PRICE OF LAND AND ALL IMPROVEMENTS IN CERTAIN BLOCKS WITHIN CITY OF WASHINGTON.

LETTER FROM THE PRESIDENT OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA, SUBMITTING A REPORT IN RESPONSE TO A SENATE RESOLUTION OF FEBRUARY 21, 1908, DIRECTING THEM TO REPORT ON THE PRICE OF LAND AND ALL IMPROVEMENTS WITHIN THE CITY OF WASHINGTON.

APRIL 6, 1908.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

EXECUTIVE OFFICE,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, April 2, 1908.

SIR: The Commissioners of the District of Columbia have the honor to report as follows in reply to the Senate resolution of February 21. 1908, directing them to report on the price of land and all improvements in certain blocks within the city of Washington.

Immediately upon the receipt of this resolution the Commissioners took action looking to as definite a report as could be made with the means in their power. The surveyor of the District of Columbia and the assessor, separately, made a thorough and painstaking examination of all of the properties in the blocks mentioned and have arrived at the following result, after conference. The Commissioners submit it as their estimate of the lowest purchase price as called for by the resolution:

	Land.	Improvements.	Total.
Square 226	$773,000	$450,000	$1,223,000
Square 227	508,000	160,000	668,000
Square 228	193,000	85,000	278,000
Square 229	180,000	50,000	230,000
Square 230	461,000	125,000	586,000
Square 256	400,000	500,000	900,000
Square 257	300,000	150,000	450,000
Square 258	400,000	120,000	520,000
Square 259	410,000	625,000	1,035,000
Square 260	280,000	45,000	325,000
Square 292	417,000	130,000	547,000
Square 293	600,000	250,000	850,000
Square 294	250,000	90,000	340,000
Square 295	220,000	60,000	280,000
Square 349	520,000	250,000	770,000
Square 350	440,000	70,000	510,000
Square 380	578,000	360,000	938,000
Square 381	740,000	180,000	920,000
Square 382	1,270,000	260,000	1,530,000
Square 451	750,000	440,000	1,190,000
Square 575	260,000	270,000	530,000
Square 576	175,000	200,000	375,000
Reservation A	403,000	425,000	828,000
Reservation B	600,000	600,000	1,200,000
Reservation C	300,000	175,000	475,000
Reservation D	275,000	240,000	515,000
Reservation 12	220,000	150,000	370,000
Total	11,923,000	6,460,000	18,383,000

Strong v. The United States (125 U. S., 656), the sum thus allowed being $401.76. This action was reported to Congress by the Secretary of the Treasury in Senate Executive Document 211, Fifty-first Congress, first session. In appropriating for said allowance (and others of like character) Congress provided that no part of any one of these claims should be paid which accrued more than six years prior to the date of filing the petition in the Court of Claims upon which the judgment was rendered, which being affirmed by the Supreme Court has been adopted by the accounting officers as the basis of allowance of such claims.

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay, as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong v. The United States was filed in the Court of Claims. Upon such readjustment no amount was found due this claimant as having accrued subsequent to July 16, 1880.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant would have been entitled under the decision in the United States against Strong, had Congress not prohibited the payment of the same, was $401.76.

Subsequent appropriation bills have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after full consideration, makes the following

FINDING OF FACTS.

Claimant is a citizen of the United States, and her decedent was an officer in the Navy thereof and a resident of the State of Pennsylvania and is the identical person whose claim under the decision of the Supreme Court of the United States in United States v. Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due the claimant by the accounting officers under said decision was $401.76; nothing was paid claimant's decedent; the amount suspended under the proviso to the act of Congress approved September 30, 1890, and which still remains unpaid, is four hundred and one dollars and seventy-six cents ($401.76).

By the Court.

Filed April 6, 1908.
A true copy.
Test this 6th day of April, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 439.

O. M. DAVIS, JR., ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF O. M. DAVIS, JR., ADMINISTRATOR OF C. L. DAVIS, DECEASED, AGAINST THE UNITED STATES.

APRIL 17, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 16, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional case No. 11450. O. M. Davis, jr., administrator of C. L. Davis, deceased, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for stores and supplies alleged to have been taken by the military forces of the United States during the late civil war. On the 26th day of April, 1904, the United States Senate referred to the court a bill in the following words:

"[S. 3579, Fifty-ninth Congress, second session.]

"A BILL For the relief of the estate of C. L. Davis, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the estate of C. L. Davis, deceased, late of Rutherford County, Tennessee, the sum of ten thousand three hundred and fifty dollars, for stores and supplies furnished the United States Army during the late war of the rebellion."

The claimant appeared in this court April 25, 1907, and filed his petition, in which it is substantially averred:

That he was appointed and duly qualified as administrator of the estate of C. L. Davis, deceased, in the county court of Rutherford County, Tenn., on the 6th day of April, 1907, and files herewith his warrant of authority.

That during the late civil war there was taken from his decedent in said county and State, by the military forces of the United States, by proper authority, and appropriated to the use of the Army, property of the kind and value, as follows:

42 head of horses and mules, at $150	$6,300
150 barrels of corn, at $5	750
16,500 pounds of bacon, at 20 cents	3,300
Total	10,350

(Taken in September, 1862, by command of Gen. D. C. Buel, and in November and December, 1862, and January, 1863, by command of Gen. W. S. Rosecrans.)

The case was brought to a hearing on loyalty and merits on the 20th day of January, 1908.

G. W. Z. Black, esq., appeared for the claimant, and the Attorney-General, by W. H. Lamar, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant's decedent, C. L. Davis, was not loyal to the Government of the United States throughout the late civil war.

II. During said period there was taken from the claimant's decedent in Rutherford County, State of Tennessee, by the military forces of the United States, by proper authority, for the use of the Army, property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of three thousand eight hundred and thirty dollars ($3,830), no part of which appears to have been paid.

III. The claim herein was never presented to any department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore mentioned, and no reason is given why the bar of any statute of limitations should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

By the Court.

Filed February 3, 1908.
A true copy.
Test this 15th day of April, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 440.

TRUSTEES OF PRESBYTERIAN CHURCH, SOMERSET, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE PRESBYTERIAN CHURCH, OF SOMERSET, KY., AGAINST THE UNITED STATES.

APRIL 18, 1908.—Referred to the Committee on Claims and order to be printed.

COURT OF CLAIMS, CLERK'S OFFICE.
Washington, April 17, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours, JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12452. Trustees of the Presbyterian Church of Somerset, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation of a church building by the military forces of the United States during the late civil war. On the 13th day of June, 1906, the United States Senate referred to the court a bill in the following words:

"[S. 387, 59th Cong., 1st sess.]

"A BILL For the relief of the trustees of the Presbyterian Church of Somerset, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Presbyterian Church of Somerset, Kentucky, the sum of one thousand two hundred dollars, for use and occupation of and damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 6th day of November, 1906, and filed their petition, in which it is substantially averred:

That during the late war for the suppression of the rebellion, and on or about February, 1862, the military forces of the United States, by proper authority, took possession of the church building of the Presbyterian Church, of Somerset, Ky., and used and occupied the same for hospital and other purposes from said date until on or about April, 1865. That the reasonable rental value of said building during the

period it was so occupied, including the repairs necessary to restore the building to the condition in which in was at the time the said military forces took possession, was the sum of $1,200, for which no payment appears to have been made.

The case was brought to a hearing on loyalty and merits on the 6th day of April, 1908.

G. W. Hott, esq., appeared for the claimants, and the Attorney-General, by M. L. Blake, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Presbyterian Church, of Somerset, Ky., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States, for their use, took possession of the church building described in the petition and used and occupied the same for hospital purposes both for Union soldiers and sick and wounded Confederate prisoners at different times for a period of about three years, and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any officer or department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate as set forth in the statement of the case herein, and no satisfactory reason is adduced showing why the same was not earlier presented.

BY THE COURT.

Filed April 13, 1908.
A true copy.
Test this 16th day of April, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 441.

LETTER RELATIVE TO FURNISHING LIST OF OFFICERS OF VOLUNTEERS ORGANIZED UNDER ACT OF MARCH 2, 1899, FOR SERVICE IN THE PHILIPPINES, SHOWING TRAVEL PAY, ETC.

LETTER

FROM

THE SECRETARY OF WAR,

IN RESPONSE TO

A SENATE RESOLUTION OF MARCH 21, 1908, CALLING FOR A LIST OF OFFICERS OF THE UNITED STATES VOLUNTEERS ORGANIZED UNDER THE ACT OF MARCH 2, 1899, FOR SERVICE IN THE PHILIPPINES, SHOWING THE DIFFERENCE BETWEEN THE AMOUNT PAID EACH OFFICER UNDER THE ACT OF MAY 26, 1900, AS TRAVEL PAY, ETC., AND THE AMOUNT EACH WOULD HAVE RECEIVED UNDER THE LAW IN FORCE AT THE TIME OF MUSTER INTO THE SERVICE.

APRIL 20, 1908.—Referred to the Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT,
Washington, April 15, 1908.

SIR: In response to Senate resolution dated March 21, 1908, directing the Secretary of War—

to transmit to the Senate a list of officers of the United States Volunteers, organized under the act of March second, eighteen hundred and ninety-nine (30 Stat. L., 977-980), for service in the Philippine Islands, showing the difference between the amount paid each officer respectively, under the act of May twenty-sixth, nineteen hundred (31 Stat. L., 210), as travel pay from the place of muster out to the place of residence at the time of appointment or the place of original muster into the service and the amount which each would have received under section 1289 of the Revised Statutes, the law in force at the time of muster into the service,

I have the honor to state, by direction of the President, that it is impossible to furnish the information from the records of the War Department, as the vouchers containing the necessary data are in the custody of the Auditor for the War Department, an official of the Treasury Department. While the War Department has a complete record of all payments made by army paymasters to officers of volun-

teers organized under the act of March 2, 1899, such record does not show the specific amount paid for travel pay on discharge or muster out in each case as distinguished from monthly pay, nor the places to which such travel pay was computed; nor are there any records in the Department upon which to base anything like an accurate statement of the amount of travel allowances of these volunteer officers discharged from service, or the differences between the amounts actually allowed them and the amounts they would have received under section 1289 of the Revised Statutes, which is the information called for by the resolution.

As stated above, the original records of such payments are filed as vouchers in the office of the Auditor for the War Department, who is the custodian of those records.

The subject-matter of the resolution was accordiugly taken up with the Secretary of the Treasury, and attention is invited to the following extract from a report made to him by the Auditor for the War Department:

In reply I have to advise you that if the Secretary of War will furnish this office with the names and dates of discharge of all the volunteer staff officers appointed under the provisions of the act of March 2, 1899, the difference between the rates of pay authorized by section 1289, Revised Statutes, and that of the act of Congress of May 26, 1900, and March 2, 1901, can be determined by this office. The Volunteer Register, published June 1, 1900, by order of the Secretary of War, gives the name of all the regimental officers of the organization brought into service under the act of March 2, 1899, but this office has no list of the staff officers brought into service by this act.

There were over 1,600 volunteer officers brought into service under this act, and it would take an examiner more than six months to make these computations. Under section 1289 of the Revised Statutes the Government had the option of transporting the officers from place of discharge to place of entry into the service, and under the acts of Congress of May 26, 1900, and March 2, 1901, officers are entitled only to actual expenses for the sea portion of the journey and 4 per cent for the land portion of the journey. This is about equivalent to furnishing the officers with transportation in kind from place of discharge to place of entry into service.

The computation required by the committee will be made with as little delay as possible upon the return of these papers with the names of all the staff officers appointed under this act.

A list of staff officers of volunteers appointed or continued in service under the act of Congress approved March 2, 1899, showing the several dates of discharge or vacation of appointment, has been furnished to the Auditor for the War Department, with a request that he will supply the information necessary to enable the Secretary of War to comply with the directions of the resolution, and as soon as the Auditor's report is received the information will be transmitted to the Senate.

Attention is invited to the statement of the Auditor as to the length of time that will be required to make the computations.

Very respectfully,

WM. H. TAFT,
Secretary of War.

The PRESIDENT OF THE SENATE.

O

LIST OF OFFICERS OF VOLUNTEERS ORGANIZED UNDER ACT OF MARCH 2, 1899, FOR SERVICE IN PHILIPPINES, SHOWING TRAVEL PAY, ETC.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING,

IN FURTHER RESPONSE TO A SENATE RESOLUTION OF MARCH 21, 1908, A LIST OF OFFICERS OF THE UNITED STATES VOLUNTEERS, ORGANIZED UNDER ACT OF MARCH 2, 1899, FOR SERVICE IN THE PHILIPPINE ISLANDS, SHOWING THE DIFFERENCE BETWEEN THE AMOUNT PAID TO EACH OFFICER UNDER THE ACT OF MAY 26, 1900, AS TRAVEL PAY, ETC., AND THE AMOUNT EACH WOULD HAVE RECEIVED UNDER SECTION 1289, REVISED STATUTES, IN FORCE AT THE TIME OF THE MUSTER INTO SERVICE.

MAY 2, 1908.—Referred to the Committee on Claims and ordered to be printed.

WAR DEPARTMENT,
Washington, April 29, 1908.

SIR: In further response to Senate resolution dated March 21, 1908, directing the Secretary of War—

to transmit to the Senate a list of officers of the United States Volunteers, organized under the act of March second, eighteen hundred and ninety-nine (Thirtieth Statutes at Large, pages nine hundred and seventy-seven to nine hundred and eighty), for service in the Philippine Islands, showing the difference between the amount paid each officer, respectively, under the act of May twenty-sixth, nineteen hundred (Thirty-first Statutes at Large, page two hundred and ten), as travel pay from the place of muster out to the place of residence at the time of appointment or the place of original muster into the service and the amount which each would have received under section twelve hundred and eighty-nine of the Revised Statutes, the law in force at the time of muster into the service,

I have the honor to transmit herewith, by direction of the President, a letter from the Auditor of the War Department, dated April 25th instant, furnishing a complete list of such officers of the United States Volunteers organized under the act of March 2, 1899, for service in the Philippine Islands, as were entitled to travel pay upon final discharge. This list gives the name and service of each officer and the addi-

tional amount which would be due should travel pay be allowed at the rates prescribed by section 1289 of the Revised Statutes.

Attention is invited to the statement of the Auditor that the amounts given are computed by taking the mileage which the officer was paid on his final discharge, as shown by his final pay voucher, and that a full and complete examination of each officer's case might lead to the discovery of errors in mileage which would change said amounts.

Very respectfully,

WM. H. TAFT,
Secretary of War.

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR WAR DEPARTMENT,
Washington, April 25, 1908.

SIR: I have the honor to return herewith Senate resolution dated March 21, 1908, which reads as follows:

Resolved, That the Secretary of War be directed to transmit to the Senate a list of officers of the United States Volunteers, organized under the act of March second, eighteen hundred and ninety-nine (Thirtieth Statutes at Large, pages nine hundred and seventy-seven to nine hundred and eighty) for service in the Philippine Islands, showing the difference between the amount paid each officer respectively, under the act of May twenty-sixth, nineteen hundred (Thirty-first Statutes at Large, page two hundred and ten) as travel pay from the place of muster out to the place of residence at the time of appointment or the place of original muster into the service and the amount which each would have received under section twelve hundred and eighty-nine of the Revised Statutes, the law in force at the time of muster into the service.

This resolution was referred to you by the Secretary of War, by indorsement dated April 15, 1908, and by you referred to this office for report by indorsement dated April 20, 1908. A complete list of such officers of the United States Volunteers organized under the act of March 2, 1899, for service in the Philippine Islands as were entitled to travel pay on final discharge is inclosed herewith. This list gives the name and service of each officer and the additional amount which would be due should travel pay be allowed at the rate prescribed by section 1289 of the Revised Statutes. The amounts given are computed by taking the mileage which the officer was paid on his final discharge as shown by his final pay voucher. A full and complete examination of each officer's case might lead to the discovery of errors in mileage which would change said amounts.

All correspondence relative to this resolution is inclosed herewith.

Respectfully,

B. F. HARPER, *Auditor.*

The SECRETARY OF THE TREASURY.

The estimates herewith furnished do not include any allowance for sea travel.

The majority of the officers discharged in the Philippine Islands were furnished transportation in kind and were reimbursed for the amount paid for subsistence. These who were not remained in the Philippines for their own convenience or refused for their own convenience to accept the transportation tendered them.

No travel pay, for sea travel, was paid under the new law. If, notwithstanding the fact that officers were furnished transportation and subsistence for sea travel, they are held to be entitled under section 1289 to pay for sea travel, each officer discharged in the Philippines would be entitled to 7,208 miles, distance from Manila to San Francisco, which equals 364.9 days, or one year's salary to each officer according to his grade when discharged.

Colonel	$3,500
Lieutenant-colonel	3,000
Major	2,500
Captain (mounted, $2,000)	1,800
First lieutenant (mounted, $1,600)	1,500
Second lieutenant (mounted, $1,500)	1,400

The Eleventh Volunteer Cavalry, the Thirty-sixth and Thirty-seventh Volunteer Infantry regiments were organized in the Philippines and discharged at San Francisco, Cal. A special act was passed allowing them travel pay from place of muster out to the place of residence at the time of appointment or the place of original muster into service. The estimates furnished in these regiments are based upon the distances for which paid in accordance with the above special act, and not back to the Philippines, the place where said regiments were organized.

If entitled under section 1289 from San Francisco to the Philippines, where the regiments were organized, each officer would be entitled to an amount equal to one year's pay as of his grade less the amount paid from San Francisco to his home.

UNITED STATES VOLUNTEER STAFF OFFICERS.

Morris C. Hutchins, major, quartermaster, U. S. Volunteers	$261.26
Edward C. McDowell, captain, assistant quartermaster, U. S. Volunteers	166.43
Peter Bartsch, second lieutenant, Signal Corps, U. S. Volunteers	721.82
Rush P. Wheat, second lieutenant, Signal Corps, U. S. Volunteers	146.46
Earl W. Brinkley, second lieutenant, Signal Corps, U. S. Volunteers	244.76
Harry W. Capron, second lieutenant, Signal Corps, U. S. Volunteers	217.77
William B. Winn, major and surgeon, U. S. Volunteers	813.66
Orlando Ducker, major and surgeon, U. S. Volunteers	259.15
Henry F. Hoyt, major and surgeon, U. S. Volunteers	413.75
Samuel T. Armstrong, major and surgeon, U. S. Volunteers	1,003.21
Wilfrid Turnbull, major and surgeon, U. S. Volunteers	764.54
William R. Graham, major and paymaster, U. S. Volunteers	638.29
William O. Bailey, first lieutenant, Signal Corps, U. S. Volunteers	373.34
Frederick M. Jones, first lieutenant, Signal Corps, U. S. Volunteers (discharged in the Philippines)	666.06
Victor Shepard, first lieutenant, Signal Corps, U. S. Volunteers	460.75
William E. Davies, first lieutenant, Signal Corps, U. S. Volunteers	224.76
William W. Colt, first lieutenant, Signal Corps, U. S. Volunteers	454.29
John C. Wessels, first lieutenant, Signal Corps, U. S. Volunteers	466.66
Niels P. Yurgenson, second lieutenant, Signal Corps, U. S. Volunteers	593.47
Charles O. Hastings, second lieutenant, Signal Corps, U. S. Volunteers	787.76
Burt E. Grabo, second lieutenant, Signal Corps, U. S. Volunteers	393.39
Lewis V. Williams, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	727.35
Thomas Swobe, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	209.92
John W. McHarg, captain, quartermaster, U. S. Volunteers	803.84
Marion M. McMillin, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	862.79
James S. Michael, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	894.66
Henry J. May, captain, quartermaster, U. S. Volunteers	165.98
Sylvanus G. Orr, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	722.84
George W. Povey, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	263.06
Alvan C. Gillem, captain, quartermaster, U. S. Volunteers	72.69
Kensey J. Hampton, captain, quartermaster, U. S. Volunteers (discharged in the Philippines)	831.39

Carroll Mercer, major, commissary of subsistence, U. S. Volunteers	$1,102.39
James C. Read, captain, commissary of subsistence, U. S. Volunteers (discharged in the Philippines)	742.49
Thomas F. Ryan, captain, commissary of subsistence, U. S. Volunteers	715.71
Harlow L. Street, captain, commissary of subsistence, U. S. Volunteers	917.25
Philip Mothersill, captain, commissary of subsistence, U. S. Volunteers	592.19
Ralph Ingalls, captain, commissary of subsistence, U. S. Volunteers	530.31

The small number of volunteer staff officers is accounted for by the fact that the majority of them were regular army officers temporarily holding volunteer commissions and when discharged from the volunteer service were not entitled to travel pay.

ELEVENTH U. S. VOLUNTEER CAVALRY.

	Difference.
Evan E. Young, captain, adjutant	$413.26
Fred H. Parks, first lieutenant, commissary	515.09
Charles A. Burritt, first lieutenant, squadron adjutant	337.35
Edward L. Glascow, captain Company A (discharged in the Philippines)	448.72
Raymond S. Enslow, first lieutenant Company A	372.31
Joseph T. Davidson, captain Company B	478.06
Francis H. Lincoln, first lieutenant Company B	306.80
Thomas H. Jennings, second lieutenant Company B	551.13
C. R. Trowbridge, captain Company C (discharged in the Philippines)	570.68
L. E. Cheatham, first lieutenant Company C	401.98
Edward S. Luthi, second lieutenant Company C (discharged in the Philippines)	356.95
George M. Wray, first lieutenant Company D	635.80
Leo M. Cutts, second lieutenant Company D	400.46
William J. Kipp, captain Company E	307.84
Charles C. Winnia, first lieutenant Company E	468.86
Otto W. Rethorst, second lieutenant Company E	346.60
Ernest H. Agnew, captain Company F	454.42
John Holtman, first lieutenant Company F	185.71
Alexander E. McKelvey, second lieutenant Company F	565.77
Walter V. Cotchett, first lieutenant Company G	219.13
John Brauminger, second lieutenant Company G	398.39
William A Green, captain Company H	500.29
Joseph W. Morris, first lieutenant Company H	369.98
Carl C. Jones, second lieutenant, Company I	338.85
Morrow C. Gustin, captain Company K	242.89
George Curry, first lieutenant Company K	252.30
Harry C. White, jr., second lieutenant Company K	455.51
Holly V. Hill, first lieutenant Company L	190.00
Frank M. Gaskill, second lieutenant Company L	348.95
George W. Winterburn, captain Company M	494.36
Frederick E. Gignoux, first lieutenant Company M	45.36
Hugh Kirkman, second lieutenant Company M	526.38

TWENTY-SIXTH U. S. VOLUNTEER INFANTRY.

Frank A. Cook, major	1,144.67
Richard S. Griswold, captain, assistant surgeon	774.45
Harris Pendleton, captain, adjutant	792.54
William F. Meeks, captain, quartermaster	774.45
Hildero Olin, first lieutenant, commissary	683.34
Duncan Elliott, first lieutenant, battalion adjutant	683.34
Solomon Auery, jr., first lieutenant, battalion adjutant	666.75
James R. Goodale, first lieutenant, battalion adjutant	657.72
George O. Hubbard, captain Company A	811.46
Frank H. Peck, captain Company B	720.28
Alvin A. Barker, captain Company C	708.33

	Difference.
Cornelius M. Brownell, captain Company D	$680.61
John Hickey, captain Company E	680.43
William Tutherly, captain Company F (discharged in the Philippines)	704.13
John Bordman, jr., captain Company G (discharged in the Philippines)	783.96
William Murray Connell, captain Company H	683.34
Alexander Greig, jr., captain Company I	697.62
Thomas Talbot, captain Company K	701.61
Reuben A. Whipple, captain Company L	672.58
Fred McDonald, captain Company M	701.40
Daniel J. Moynihan, first lieutenant Company A (discharged in the Philippines)	545.94
James P. Clare, first lieutenant Company B	628.43
Henry M. Fales, first lieutenant Company C	480.23
Alfred M. Mason, first lieutenant Company D	540.71
Henry G. Crockett, first lieutenant Company E	583.01
William Sullivan, first lieutenant Company F	562.79
Alfred Hasbrouck, first lieutenant Company G	541.90
Homer B. Grant, first lieutenant Company H	564.64
George D. Rice, first lieutenant Company I	543.30
Philip S. Golderman, first lieutenant Company K	534.99
Harry E. Comstock, first lieutenant Company L	558.91
William H. Plummer, first lieutenant Company M	556.72
G. Roland Fortesque, first lieutenant Company H (discharged in the Philippines)	543.24
Roy Emigh, second lieutenant Company A	473.54
Timothy M. Coughlan, second lieutenant Company B	502.74
Earl C. Pierce, second lieutenant Company C	517.11
Sanford E. Worthington, second lieutenant Company D	492.24
Jay H. Hennig, second lieutenant Company E	443.26
George R. D. MacGregor, second lieutenant Company F	495.79
Garrison Ball, second lieutenant Company G	502.74
George Garrity, second lieutenant Company I	495.79
Robert H. Sillman, second lieutenant Company K (discharged in the Philippines)	501.97
E. Alexis Jeunet, second lieutenant Company L	502.74
John T. Ryan, second lieutenant Company M	443.26
Charles C. How, second lieutenant Company H (discharged at place of enrollment).	
Frank E. Edwards, first lieutenant, commissary (deserted).	
Max Wagner, second lieutenant (killed in line of duty).	
Roy L. Fernald, second lieutenant (killed in line of duty).	

TWENTY-SEVENTH U. S. VOLUNTEER INFANTRY.

William Bowen, captain, assistant surgeon	509.01
Leonard H. Graves, first lieutenant, assistant surgeon	592.26
Theodore B. Taylor, captain, adjutant	773.75
Eastman G. Currey, captain, quartermaster	613.47
J. Howard Griffiths, first lieutenant, commissary	657.09
Edwin S. Hartshorn, first lieutenant, adjutant	683.34
Daniel Hyman, first lieutenant, battalion adjutant	590.10
Fred. H. Plummer, first lieutenant, battalion adjutant	663.60
William F. Judson, captain, adjutant (assigned to Company A, captain; discharged in the Philippines)	666.33
J. D. Fauntleroy, first lieutenant, battalion adjutant (assigned to Company A, captain; discharged in the Philippines)	887.63
Zan F. Collett, first lieutenant, battalion adjutant (assigned to Company I)	725.68
Oscar D. Weed, first lieutenant, battalion adjutant (assigned to Company E)	498.27
George A. Vernon, first lieutenant, battalion adjutant (assigned to Company G, first lieutenant)	529.24

	Difference.
Arthur L. McCoy, first lieutenant Company A	$464.77
Matthew T. E. Ward, first lieutenant Company B (discharged in the Philippines)	593.79
Dexter Sturges, captain Company C	625.38
Robert S. Knox, first lieutenant Company D	524.36
Harry F. Smith, second lieutenant Company D	502.56
Delphey T. E. Casteel, captain Company E	583.17
Thomas M. Knox, first lieutenant Company F	526.72
William H. Raymond, second lieutenant Company F (over five years' service; discharged in the Philippines)	634.85
Charles Brecht, captain Company G	538.86
Joseph W. Lacour, second lieutenant Company G	473.99
William B. Gracie, captain Company H	660.87
James G. Hannah, first lieutenant Company H (discharged in the Philippines)	647.68
Charles B. Baker, second lieutenant Company H (discharged in the Philippines)	564.96
Julien E. Ganjot, captain Company I (discharged in the Philippines)	659.18
Alfred J. Booth, second lieutenant Company I	502.56
Frank L. Graham, captain Company K	814.32
George C. Shaw, first lieutenant Company K	527.22
Frederick B. Hennessy, second lieutenant Company K (discharged in the Philippines)	532.78
Albert B. Sloan, captain Company L	523.95
Francis W. Griffin, first lieutenant Company L	515.10
Charles J. Schneider, second lieutenant Company L (discharged in the Philippines)	564.95
Howard Atkinson, captain Company M (discharged in the Philippines)	651.42
Lewis St. Clair Mumford, first lieutenant Company M	418.65

TWENTY-EIGHTH U. S. VOLUNTEER INFANTRY.

Robert W. Leonard, lieutenant colonel, field and staff	1,374.62
Charles S. Campbell, captain, adjutant, field and staff	752.10
Charles W. Barber, first lieutenant, commissary, field and staff	666.12
John M. Dunn, first lieutenant, battalion adjutant, field and staff	663.18
Bradley J. Wootten, first lieutenant, battalion adjutant, field and staff	664.44
Daniel H. Geinty, first lieutenant, battalion adjutant, field and staff	705.18
John F. Bishop, second lieutenant, field and staff	434.00
John P. Teagarden, captain Company A	597.24
William H. Lyons, first lieutenant Company A	459.05
James M. Grey, second lieutenant Company A	564.25
Charles G. Bickham, captain Company B	538.44
Frederick B. Neilson, first lieutenant Company B	534.30
Lewis M. Clark, second lieutenant Company B (discharged in the Philippines)	613.20
Samuel D. Crawford, captain Company C	657.72
Samuel Willits, first lieutenant Company C	587.13
Marion B. Mabson, second lieutenant Company C	397.05
Peter Vredenburgh, captain Company D	676.8[illegible]
Alpha T. Easton, first lieutenant Company D	473.0[illegible]
Louis E. Schucker, second lieutenant Company D	452.9[illegible]
John D. Croasmun, captain Company E	606.9[illegible]
Harry A. Porter, first lieutenant Company E (discharged in the Philippines)	764.4[illegible]
Samuel A. Price, captain Company F	667.1[illegible]
Charles C. Allen, first lieutenant Company F (discharged in the Philippines)	597.4[illegible]
George W. Biegler, captain Company G	235.6[illegible]
George H. Wood, first lieutenant Company G	431.6[illegible]
Anton H. Schroeter, second lieutenant Company G (discharged in the Philippines)	564.5[illegible]
Edward D. H. Couch, captain Company H (discharged in the Philippines)	525.9[illegible]

	Difference.
Charles L. Beatty, first lieutenant Company H (discharged in the Philippines)	$674.25
C. Rodman Jones, second lieutenant Company H	488.50
Adam C. Carson, captain Company I (discharged in the Philippines)	728.73
Leonard T. Waldron, first lieutenant Company I	527.52
Claude S. Fries, captain Company K	664.45
Edgar S. Stayer, first lieutenant Company K	533.35
Ralph M. Mitchell, second lieutenant Company K	488.50
John H. Dunn, captain Company L	701.60
Charles H. Boise, first lieutenant Company L	523.00
Robert S. Hansbury, second lieutenant Company L	488.50
William C. King, captain Company M	636.09
Henry S. Terrill, first lieutenant Company M	543.80
Harry J. Goodyear, second lieutenant Company M	473.82
Hugh C. Young, second lieutenant Company M	467.96

TWENTY-NINTH U. S. VOLUNTEER INFANTRY.

Charles L. G. Anderson, major, surgeon	902.27
Cleveland Wilcoxen, captain, adjutant	655.05
George E. Lovell, captain, quartermaster	728.76
Joseph L. Sanford, captain, assistant surgeon	738.99
Walter K. Wheatley, first lieutenant, commissary	573.72
James M. Kimbrough, first lieutenant, adjutant	587.58
William P. Screws, first lieutenant, adjutant	544.11
Lawrence S. Carson, first lieutenant, battalion adjutant	632.87
Edward S. Hill, captain	633.99
William S. Wells, jr., first lieutenant	446.86
Howard C. Tatum, second lieutenant	430.13
William S. Faulkner, captain	660.66
George M. Holley, first lieutenant	457.98
John J. Miller, second lieutenant	452.06
Holman G. Puriton, captain (apparently discharged in the Philippines)	549.19
Robert J. Arnold, first lieutenant	460.17
William B. Bonham, second lieutenant	426.13
James M. Liddell, second lieutenant (discharged in the Philippines)	569.71
Edward H. Almond, first lieutenant	468.96
Judge L. Farwell, second lieutenant (discharged in the Philippines)	532.26
Owen T. Kenan, captain	584.85
Blanton Winship, first lieutenant (discharged in the Philippines)	468.77
William B. Renzieheim, second lieutenant	426.13
Madison H. Wilson, first lieutenant (discharged in the Phillipines)	490.52
Rowland S. Pike, second lieutenant	460.37
Philip H. Stern, captain	544.11
William P. Clark, first lieutenant	481.93
Hugh S. Brown, second lieutenant	426.13
Stephen O. Fugua, captain	657.72
Robert E. Grinstead, first lieutenant	439.69
Calvin J. Holmes, second lieutenant (apparently discharged in the Philippines)	424.73
Albert S. Williams, captain (discharged in the Philippines)	551.88
Thomas S. Moorman, jr., first lieutenant	505.67
Charles M. Pendleton, second lieutenant (apparently discharged in the Philippines)	424.69
James Longstreet, jr., captain	657.72
James H. Blount, jr., first lieutenant (records indicate discharge in the Philippines)	467.97
William E. Persons, second lieutenant	426.13
William A. Paul, captain	726.60
Thomas H. Underwood, first lieutenant (discharged in the Philippines)	569.79
Milton H. Hollingsworth, second lieutenant (discharged in the Philippines)	425.16
Joseph H. Grant, captain (discharged in the Philippines)	607.95
Robert O. Petterson, first lieutenant	492.37
Edward O. Perkins, second lieutenant	692.36

THIRTIETH U. S. VOLUNTEERS.

	Difference.
Kenneth M. Burr, major, field staff and battalion	$773.26
Albert H. Eber, first lieutenant and assistant surgeon, field staff and battalion	477.59
Charles E. Reese, captain, adjutant, field staff and battalion	628.47
Frank H. Burton, captain, quartermaster, field staff and battalion	627.75
Edmond R. Tompkins, first lieutenant, commissary, field staff and battalion	636.93
Harry D. Blasland, first lieutenant, adjutant, field staff and battalion (discharged in the Philippines)	508.07
Kaolin L. Whitson, first lieutenant, adjutant, field staff and battalion	643.44
Francis W. Ralston, first lieutenant, adjutant, field staff and battalion	664.23
Frank D. Newberry, captain Company A	524.37
Virden C. Peckenpaugh, first lieutenant Company A	366.34
George J. Harmon, second lieutenant Company A	367.67
E. Ross Smith, captain Company B	510.30
Guilford S. Garber, first lieutenant Company B (discharged in the Philippines	379.72
Charles A. Sharp, second lieutenant Company B	365.73
John W. C. Abbott, second lieutenant Company B	302.66
Edward I. Miller, captain Company C	480.69
Harry R. Chadwick, first lieutenant Company C (discharged in the Philippines)	535.08
William H. Wilder, second lieutenant Company C	361.72
Frank D. Buckingham, captain Company D	548.31
John T. Foley, first lieutenant Company D	397.10
William C. Twight, second lieutenant Company D (discharged in the Philippines)	406.37
Charles W. Stewart, second lieutenant Company E	365.89
Charles U. Bear, first lieutenant Company E	394.24
Harrison S. Kerrick, captain Company F (discharged in the Philippines)	549.10
John W. C. Abbott, first lieutenant Company F	340.12
Ernest L. Hamilton, second lieutenant Company F (discharged in the Philippines)	404.04
Gilmore G. Scranton, captain Company G	554.61
Charles H. Errington, first lieutenant Company G (discharged in the Philippines)	460.49
William R. Downey, second lieutenant Company G	379.64
Daniel Wells, first lieutenant Company G (discharged in the Philippines)	475.31
George F. Connolly, captain Company H	490.77
Edward H. Andres, first lieutenant Company H (discharged in the Philippines)	476.07
Robert E. Brooks, second lieutenant Company H (discharged in the Philippines)	449.88
Merrell E. Webb, captain Company I	542.31
John McBride, jr., first lieutenant Company I (discharged in the Philippines)	493.53
Lester J. Wood, second lieutenant Company I	364.34
Frank W. Latimer, captain Company K	456.33
William F. Pack, first lieutenant Company K	424.20
William B. Wallace, second lieutenant Company K	365.74
Albert E. McCabe, captain Company L (discharged in the Philippines)	421.60
Francis J. Ellison, first lieutenant Company L	547.76
Robert H. Gulick, second lieutenant Company L	483.98
Charles P. Newberry, captain Company L (discharged in the Philippines)	1,069.27
Joseph W. Poterfield, captain Company M	392.49
Charles S. Tarlton, first lieutenant Company M	418.47
A. Holt Bradford, second lieutenant Company M	334.08

THIRTY-FIRST U. S. VOLUNTEERS.

	Difference.
Abram L. Haines, surgeon	$918.20
Ralph S. Porter, assistant surgeon	556.88
Paul C. Galleher, captain, adjutant	600.88
—— Sharpley, captain, quartermaster	743.97
William O. Reed, first lieutenant, commissary	503.06
William H. Monroe, first lieutenant, battalion adjutant	579.81
H. Watson Lindsey, first lieutenant, battalion adjutant	530.67
Charles O. Thomas, first lieutenant, battalion adjutant (discharged in the Philippines)	591.52
Benjamin Stark, captain Company A (discharged in the Philippines)	781.37
David A. Snyder, second lieutenant Company A	446.91
Philip J. Van Ness, captain Company B (discharged in the Philippines)	622.26
Marion B. Wilhoit, first lieutenant Company B	441.70
James Totten, second lieutenant Company B	509.81
Lucius C. Bennett, captain Company C	543.27
Arthur T. Balentine, first lieutenant Company C	526.72
Walter O. Bowman, second lieutenant Company C	383.64
William E. Cabell, captain Company D (discharged in the Philippines)	705.94
Dewitt W. Chamberlain, first lieutenant Company D	527.22
Wilson B. Jennings, second lieutenant Company D	483.71
Kent Browning, captain Company E	550.41
William A. Castle, first lieutenant Company E	456.36
William B. Eulass, second lieutenant Company E	450.20
William M. Schofield, captain Company F (discharged in the Philippines)	911.10
Wilford Twyman, first lieutenant Company F	425.38
Richard M. Corwine, second lieutenant Company F (discharged in the Philippines)	543.74
Robert C. Payne, captain Company G	525.63
Henry Gibbins, first lieutenant Company G	469.49
John P. Spurr, second lieutenant Company C	397.69
William J. White, captain Company H (discharged in the Philippines)	592.77
Percy H. Hawkins, first lieutenant Company H	431.77
Answell E. Deitsch, second lieutenant Company H	396.14
James L. Burchfield, captain Company I (discharged in the Philippines)	813.02
Frank S. Lowry, first lieutenant Company I (discharged in the Philippines)	516.32
Harry D. Michell, second lieutenant Company I (discharged in the Philippines)	448.30
Charles A. Reynolds, captain Company K (discharged in the Philippines)	632.06
Charles F. Richard, first lieutenant Company K	393.06
Curtis G. Rosebeck, second lieutenant Company K	484.02
Ellison L. Gilmer, captain Company L	654.15
Hugh C. Preston, first lieutenant Company L	499.95
Albert H. Stevens, second lieutenant Company L	474.16
John A. Wagner, captain Company M	614.25
John B. Farmer, first lieutenant Company M	419.15
Charles F. Danforth, second lieutenant Company M (discharged in the Philippines)	543.74

THIRTY-SECOND U. S. VOLUNTEER INFANTRY.

Morton T. Henry, major	1,143.57
Charles Ellet Cabell, major	933.02
Frank M. Rumbold, captain, adjutant	537.86
Lanier Cravens, captain, quartermaster	905.67
James C. Hixson, first lieutenant, commissary (discharged in the Philippines)	617.35
Arthur Schaeffer, first lieutenant, battalion adjutant	426.51
Archie Miller, first lieutenant, battalion adjutant	475.02

	Difference.
William H. Clopton, jr., first lieutenant, battalion adjutant	$552.72
John P. Grinstead, captain company A	460.84
Henry M. Morrow, first lieutenant Company A (discharged in the Philippines)	348.83
George H. Armitage, second lieutenant Company A	33.28
John H. Goldman, captain Company B (discharged in the Philippines)	736.02
Grant Gillespie, first lieutenant Company B	416.80
Philip Mowry, second lieutenant Company B	544.62
Henry A. Peed, captain Company C (discharged in the Philippines)	495.62
Benjamin R. Wade, first lieutenant Company C	349.97
John Ryan, second lieutenant Company C (discharged in the Philippines)	437.67
Charles D. Comfort, captain Company D	475.02
John M. Shook, first lieutenant Company D	330.77
Junius I. Boyle, second lieutenant Company D (discharged in the Philippines)	298.74
Granville Sevier, captain Company E	541.80
George H. Caldwell, first lieutenant Company E	419.83
Charles R. W. Morrison, second lieutenant Company E	485.57
Amos W. Brandt, captain Company F	418.53
Charles C. Smith, first lieutenant Company F (discharged in the Philippines)	471.21
Frank Werner, second lieutenant Company F	312.75
George S. Ralston, captain Company G (discharged in the Philippines)	682.91
Ambrose G. C. Williams-Foote, first lieutenant Company G (discharged in the Philippines)	768.45
Henry K. Love, second lieutenant Company G (discharged in the Philippines)	543.76
Thomas A. Hayson, captain Company H (discharged in the Philippines)	470.70
George R. Crawford, second lieutenant Company H	302.56
Frank W. Eckers, captain Company I (discharged in the Philippines)	485.75
George P. Whitsett, first lieutenant Company I (discharged in the Philippines)	402.92
Gus Hadwiger, second lieutenant Company I	298.53
Edwin J. Griffith, captain Company K	430.20
Robert T. Crawford, first lieutenant Company K (discharged in the Philippines)	400.48
Edward C. Wells, second lieutenant Company K (discharged in the Philippines)	394.21
Jacob H. Culver, captain Company L	372.33
George E. Goodrich, first lieutenant Company L (discharged in the Philippines)	468.58
Henry E. Schack, second lieutenant Company L (discharged in the Philippines)	398.37
William S. Mapes, first lieutenant Company M	348.26
George G. Dennis, second lieutenant Company M	312.75
James L. Long, first lieutenant, miscellaneous (discharged in the Philippines)	427.14

THIRTY-THIRD U. S. VOLUNTEERS.

Edmund G. Shields, major (discharged in the Philippines)	771.82
R. Albert Lieberman, major surgeon	634.79
James S. Butler, captain and adjutant	562.35
William S. Cunningham, captain and quartermaster	418.74
Tilman Campbell, first lieutenant and commissary	494.34
John C. Greenewalt, captain and assistant surgeon (discharged in the Philippines)	818.45
W. L. Lowe, first lieutenant and battalion adjutant	657.72
Carroll Power, first lieutenant and battalion adjutant (discharged in the Philippines)	500.55

	Difference.
Thomas L. Sherburne, first lieutenant and battalion adjutant (discharged in the Philippines)	$447.27
Sherman Craig, second lieutenant	463.34
Edgar N. Coffey, captain Company A	471.45
Henry J. McKenney, first lieutenant Company A	529.02
Sebring C. Megill, second lieutenant Company A	361.71
John A. Jackson, second lieutenant Company A	294.99
Charles Van Way, captain Company B	412.65
J. J. Lipop, first lieutenant Company B (discharged in the Philippines)	506.51
Lamar G. Humphrey, second lieutenant Company B	343.33
James M. Burroughs, captain Company C	447.51
Solomon T. Jeffers, first lieutenant Company C	384.47
Thomas W. White, second lieutenant Company C	295.77
Lindsey P. Rucker, captain Company D	428.61
Frank D. Tompkins, first lieutenant Company D	362.08
Edward G. McDougall, second lieutenant Company D	361.71
Arthur L. B. Davies, captain Company E (discharged in the Philippines)	336.99
Charles L. Millard, first lieutenant Company E	527.22
Albert E. Gebert, second lieutenant Company E	361.71
Godfrey R. Fowler, captain Company F	657.72
John W. Healy, first lieutenant Company F (discharged in the Philippines)	528.17
John M. Flemister, second lieutenant Company F	336.13
Henry L. Jenkinson, captain Company G	644.49
Frank L. Case, first lieutenant Company G	451.91
Robert F. Tate, second lieutenant Company G	384.88
John A. Hulen, captain Company H	414.12
Donald C. McClelland, first lieutenant Company H	547.76
William M. Trye, second lieutenant Company H	349.35
Richard T. Ellis, captain Company I (discharged in the Philippines)	577.55
Earle Edmundson, first lieutenant Company I	363.77
Frederick E. Coe, second lieutenant Company I (discharged in the Philippines)	501.80
Theodore Schultz, captain Company K	475.02
John W. Ward, first lieutenant Company K	423.35
Wallace W. Goddard, second lieutenant Company K (discharged in the Philippines)	708.42
Edward Davis, captain Company L	657.72
William Hugh, first lieutenant Company L	569.79
Richard P. Cordill, second lieutenant Company L (discharged in the Philippines)	432.45
John F. Green, captain Company M (discharged in the Philippines)	444.15
Arthur W. Pickel, first lieutenant Company M	453.17
Walter J. Scott, second lieutenant Company M (discharged in the Philippines)	340.30

THIRTY-FOURTH U. S. VOLUNTEER INFANTRY.

H. B. Wilkinson, captain, assistant surgeon, field and staff (discharged in the Philippines)	760.17
Harry W. Newton, captain, adjutant, field and staff	548.56
Charles A. Green, captain, quartermaster, field and staff	568.29
Stewart M. Decker, first lieutenant, commissary, field and staff	455.28
Samuel D. McAllister, first lieutenant, battalion adjutant, field and staff	550.62
Coleman Sherrard, first lieutenant, battalion adjutant, field and staff	353.14
Eliphalet Baldwin, first lieutenant, assistant surgeon, field and staff	266.04
Leonard L. Deitrick, first lieutenant, battalion adjutant, field and staff	279.93
Frank W. Foxworthy, captain, assistant surgeon, field and staff	582.55
Richard C. Day, first lieutenant, commissary, field and staff	454.65
Henry C. Barnes, first lieutenant, battalion adjutant, field and staff	438.48
Clark M. Carr, captain Company A	696.57
Lafayette A. Dorrington, first lieutenant Company A	422.59
Harry G. Peterson, second lieutenant Company A	445.14
Cushman Rice, first lieutenant Company A	494.44

	Difference.
Alfred S. Morgan, captain Company B	$503.37
John V. Green, first lieutenant Company B	434.14
B. N. Rittenhouse, second lieutenant Company B	472.44
Wilson G. Heaton, captain Company C	440.16
John W. Hausermann, first lieutenant Company C	384.28
John F. Murphy, second lieutenant Company C	310.78
Ode. C. Nichols, second lieutenant Company D	355.44
William E. Dame, captain Company E	261.66
Edwin I. Bracken, first lieutenant Company E	445.30
John H. Ruff, second lieutenant Company E	223.84
Robert A. Corliss, second lieutenant Company E	282.86
Frank G. Russell, captain Company F	851.57
Wilson G. Heaton, captain Company F	440.66
Denny Verdi, first lieutenant Company F	544.09
Christopher J. Rollis, captain Company G	544.02
Frank E. Sidman, second lieutenant Company G	548.78
Frank L. French, captain Company H	488.31
Arthur G. Duncan, first lieutenant Company H	597.19
John N. Currie, second lieutenant Company H	387.34
Frank A. Sullivan, captain Company K	554.36
Joseph Matson, first lieutenant Company K	405.76
Frank A. Jernigan, second lieutenant Company K	444.37
Frederick Goedecke, captain Company L	502.37
John H. Neff, first lieutenant Company L	555.06
Arthur G. Duncan, first lieutenant Company L	575.03
William M. Milne, second lieutenant Company M	614.60
Granville D. Montgomery, first lieutenant Company M	276.94

THIRTY-FIFTH U. S. VOLUNTEERS.

Gordon N. Kimball, first lieutenant, commissary	176.19
John H. Lewis, first lieutenant, battalion adjutant	657.72
Alvin C. Voris, first lieutenant, battalion adjutant	499.67
William F. Godson, first lieutenant, battalion adjutant	709.59
William G. Schreider, captain Company A	102.27
Eugene P. Crowne, captain Company A (discharged in the Philippines)	183.30
Leonard T. Baker, first lieutenant	326.22
Donald W. Strong, second lieutenant	75.18
Harry N. Cootes, captain Company B	632.10
John N. Huges, first lieutenant Company B	16.00
Carl B. Hard, second lieutenant Company B	147.32
James A. Ruggles, captain Company C	481.32
Robert W. Collins, first lieutenant Company C	503.29
John F. Newport, second lieutenant Company C	596.20
Henry T. Matthews, captain Company D	109.41
Bernard Goss, second lieutenant Company D	.75
Frank I. Otis, second lieutenant Company D	262.92
Samuel M. English, first lieutenant Company E (discharged in the Philippines)	1.13
Allan Lefort, second lieutenant Company E	544.08
Jack E. Harding, first lieutenant Company F	217.73
Asa F. Fisk, first lieutenant Company F	220.34
George I. Becker, captain Company G	452.34
James M. McManus, first lieutenant Company E	365.12
Benjamin Kossman, second lieutenant Company G	305.17
James H. Aldrich, captain Company H	1.05
Louis S. Chappelear, first lieutenant Company H (discharged in the Philippines)	91.18
Roger Dubal, second lieutenant Company H	604.94
Clark R. Elliott, first lieutenant Company I	406.14
John Alden Degen, second lieutenant Company I	408.03
Selwyn D. Smith, second lieutenant Company K	102.39
Arthur F. Halpin, captain Company L	102.27
Perry W. Vandervoort, first lieutenant Company L	431.94
John P. Hasson, second lieutenant Company L (discharged in the Philippines)	135.63

	Difference.
Theophilus B. Steele, first lieutenant Company M (discharged in the Philippines)	$614.60
John F. McCarthy, second lieutenant Company M (discharged in the Philippines)	345.68

THIRTY-SIXTH U. S. VOLUNTEER INFANTRY.

William R. Grove, colonel	650.87
William L. Luhn, lieutenant-colonel	347.28
William H. Bishop, major (discharged in the Philippines)	645.25
John Q. A. Broaden, major (discharged in the Philippines)	673.64
Ewing E. Booth, captain, adjutant	346.92
Daniel T. Craig, captain, quartermaster	482.93
Alexander Goehr, first lieutenant, commissary	774.56
A. M. Ferguson, first lieutenant, battalion adjutant (discharged in the Philippines)	379.46
Christian A. Bach, first lieutenant, battalion adjutant (discharged in the Philippines)	456.54
Harry Bell, captain, adjutant (discharged in the Philippines)	585.80
Frederick R. Dodge, captain, quartermaster (discharged in the Philippines)	528.39
Victor J. Bergstrom, second lieutenant	335.76
Allen P. Norton, second lieutenant	84.69
Loren E. Cheever, captain (discharged in the Philippines)	395.27
John A. Brown, second lieutenant	281.00
Frank T. McNarney, second lieutenant (discharged in the Philippines)	618.24
Charles W. Mead, captain (discharged in the Philippines)	287.17
Roscoe Treadwell, first lieutenant (discharged in the Philippines)	233.24
George Oden, jr., second lieutenant (discharged in the Philippines)	85.58
Henry Steere, captain (discharged in the Philippines)	113.27
Warren H. Ickis, captain Company G	409.29
Oscar A. McGee, first lieutenant Company G	162.18
John M. Craig, second lieutenant Company G	313.94
Cornelius F. O'Keefe, captain Company H	449.82
Alex H. Davidson, first lieutenant Company H	132.27
Israel F. Costello, second lieutenant Company H	512.47
Carl L. Stone, captain Company I	449.82
Milo C. Carey, first lieutenant Company I	205.68
George K. Wilson, second lieutenant Company I	221.55
William T. Gwynne, first lieutenant Company I	406.76
Smith K. Fitzhugh, captain Company K	201.18
George T. Bowman, first lieutenant Company K	482.58
Frank L. Hempsted, second lieutenant Company K	134.32
Thomas B. Crockett, first lieutenant Company K	494.29
Edward McGowan, captain Company L	410.97
John A. Huntsman, second lieutenant Company L	309.92
Will H. Point, captain Company M	430.09
James M. Petty, second lieutenant Company M	486.98

THIRTY-SEVENTH U. S. VOLUNTEER INFANTRY.

B. Frank Cheatham, colonel	1,159.90
Thomas R. Hamer, lieutenant-colonel	404.17
Henry B. Orwig, major (discharged in Philippines)	642.70
Albert J. Erickson, captain, acting quartermaster	325.83
Robert O. Ragsdale, first lieutenant, battalion adjutant	546.00
John S. E. Young, first lieutenant, battalion adjutant	744.01
Ira Keithley, first lieutenant, battalion adjutant (discharged in Philippines)	486.57
Charles H. Sleeper, captain, unassigned (discharged in Philippines)	348.98
Sam Van Leer, captain Company A	546.00
Albert J. Bright, first lieutenant Company A	437.67
Harry J. O'Brien, second lieutenant Company A	350.87
Hu B. Myers, captain Company B	553.98
Charles M. McLester, first lieutenant Company B	437.67
Harry E. Potter, second lieutenant Company B	626.46

	Difference.
Henry R. Richmond, captain Company C	$628.39
Granville L. Chapman, first lieutenant Company C	438.67
Richard W. Walker, second lieutenant Company C	401.57
Nick H. Given, captain Company D	546.00
John C. Patton, first lieutenant Company D	437.67
Robert M. Shearer, second lieutenant Company D	395.84
Charles N. Clark, captain Company E	455.67
Winston Pilcher, first lieutenant Company E	438.67
Reuben V. Baskette, second lieutenant Company E	449.90
Henry A. Hutchings, captain Company F (discharged in the Philippines)	202.80
Frank Answard, first lieutenant Company F	341.88
John Storck, second lieutenant Company F	339.77
James W. McIntyre, second lieutenant	525.76
Lewis W. Cass, second lieutenant	450.99
Michael Flaherty, captain	602.15
William B. Aiken, second lieutenant	441.18
John E. Maran, captain	295.26
Ernest Van D. Murphy, first lieutenant	220.34
William G. Miles, second lieutenant	384.94
William B. Hanna, captain	274.89
Leo F. Foster, captain	407.40
Thomas Embry, second lieutenant	298.60
John T. Fuller, second lieutenant	524.74
John L. Russell, first lieutenant	575.30
William T. Vaughan, first lieutenant	436.65
S. B. McIntyre, first lieutenant	455.50
Thomas W. Gunn, second lieutenant	482.99
Jesse G. Lowenberg, first lieutenant	466.12
Alvin K. Baskett, first lieutenant	1,244.58

THIRTY-EIGHTH U. S. VOLUNTEER INFANTRY.

George L. Hicks, major, surgeon	986.60
Beverly A. Read, captain, adjutant	406.98
Will G. Fleischhauer, captain, quartermaster	546.42
Ira T. Morrison, first lieutenant, commissary	660.22
William A. Covington, first lieutenant, battalion adjutant	541.80
Fred A. Thompson, first lieutenant, battalion adjutant	480.34
Douglas H. Jacobs, first lieutenant, battalion adjutant	664.23
William H. Collier, captain Company A	554.40
Joseph L. Kraemer, first lieutenant Company A	440.46
John R. Maxwell, second lieutenant Company A	384.70
Ross A. Nichols, captain Company B	472.50
Andrew J. Brown, jr., first lieutenant Company B	483.26
Alexander C. Davis, second lieutenant Company B	349.48
John S. Powell, captain Company C	572.67
Ruben D. Blanchard, first lieutenant Company C	372.21
Walter C. Hudson, second lieutenant Company C	356.89
John L. Jordan, captain Company D	541.80
Robert F. Woods, first lieutenant Company D	519.82
John W. Hunter, second lieutenant Company D	507.03
Claude E. Sawyer, captain Company E	618.24
Samuel G. Shartle, second lieutenant Company E	482.35
Neil P. Povey, captain Company F	490.35
Frank S. Krebs, first lieutenant Company F	381.14
William O. Thornton, second lieutenant Company F	406.95
Robert M. Nolan, captain Company G	519.12
Henry V. Stevens, first lieutenant Company G	456.80
Goodwin Compton, second lieutenant Company G	408.40
John W. Moore, captain Company H	431.97
Amzi B. Kelly, first lieutenant Company H	320.31
Fred Bury, second lieutenant Company H	383.77
David F. Allen, captain Company I	508.83
Elisha G. Abbott, first lieutenant Company I	327.22
John E. Morris, captain Company K	462.21

	Difference.
Daniel R. Johnson, first lieutenant Company K	$533.13
Albert J. Wonde, second lieutenant Company K	351.03
John E. Weber, captain Company L	475.02
Louis D. Howard, first lieutenant Company L	367.50
Frederick C. Husman, second lieutenant Company L	349.48
Clarence L. Grinstead, captain Company M	530.67
Thaddeus B. Sleigle, first lieutenant Company M	506.00

THIRTY-NINTH U. S. VOLUNTEERS.

Norman Seaton, major, surgeon	1,394.73
Charles H. Hilton, jr., captain, regimental adjutant	340.98
Noel Gaines, captain, regimental adjutant	612.29
Albert J. Merklein, first lieutenant, battalion adjutant	366.82
Alexander B. Coxe, first lieutenant, battalion adjutant	389.22

Officers discharged during service.

Ed. G. Beesom, first lieutenant, assistant surgeon	344.29
Albert M. Petite, first lieutenant	321.33
Frank W. Mohr, second lieutenant	531.76
Charles W. Bowdle, second lieutenant	505.31

Difference in travel allowances due officers.

John L. Thoburn, captain Company A	530.25
Ellis Cromwell, first lieutenant Company A	500.63
Henry R. Casey, second lieutenant Company A	399.05
Thomas Hardeman, captain Company B	596.67
Robert S. Welch, first lieutenant Company B	442.71
Walter E. Barrett, second lieutenant Company B	303.78
Augustus F. W. McMannus, captain Company C	499.61
T. Trent Grant, first lieutenant Company C	476.55
Charles L. Causler, second lieutenant Company C	395.84
Andrew J. Burt, captain Company D	204.45
George M. Apple, first lieutenant Company D	241.39
Lewis Bradley, second lieutenant Company D	389.44
Hiram C. Baker, captain Company E	388.50
Charles S. Frank, first lieutenant Company E	526.74
Marcus Cooel, second lieutenant Company E	465.05
Wallace C. Taylor, captain Company F	507.10
Arthur T. Rockwood, second lieutenant Company F	276.25
Edward A. Kreger, captain Company G	415.38
Arthur Orton, first lieutenant Company G	423.19
Fred Cooke, second lieutenant Company G	.77
Joseph B. Caughey, captain Company H	484.47
Henry E. Courtney, first lieutenant Company H	491.63
Frank Maloney, captain Company I	585.69
Charles R. Wood, first lieutenant Company I	413.67
Nathan J. Shelton, second lieutenant Company I	332.31
George W. Green, captain Company K	578.13
Gideon H. Williams, first lieutenant Company K	471.63
Frank C. Burnett, second lieutenant Company K	406.67
Frank S. Long, captain Company L	449.82
Robert McConnell, second lieutenant Company L	287.52
Mack Richardson, captain Company M	519.96
Perrin L. Smith, first lieutenant Company M	370.19
George W. Wilkins, second lieutenant Company M	291.08

FORTIETH U. S. VOLUNTEERS.

Edward A. Romig, major, field and staff	592.57
William J. Boyd, first lieutenant and assistant surgeon, field and staff	.91
A. W. Lilienthal, captain and adjutant, field and staff	796.16
E. E. Barton, captain and quartermaster, field and staff	568.93
D. M. Dodge, first lieutenant and commissary, field and staff	472.22

	Difference.
Hal Sayer, first lieutenant and adjutant, field and staff	$300.24
Hy. P. Fletcher, first lieutenant and battalion adjutant, field and staff	646.52
Kenneth C. Mantel, first lieutenant and battalion adjutant, field and staff	67.24
George C. Cleg, second lieutenant, field and staff	671.31
Luther S. Kelley, captain Company A	656.58
William E. Utterback, first lieutenant Company A	404.14
Fred W. Bigbee, second lieutenant Company A	86.12
William J. Kendrick, captain Company B	574.35
Quincy E. McDowell, first lieutenant Company B	407.31
Joseph C. Righter, jr., second lieutenant Company B	466.98
William McK. Lambdin, captain Company C	408.82
William R. Crawford, first lieutenant Company C	597.76
Tom B. Ellis, second lieutenant Company C	427.03
Thomas Lester McGirr, captain Company D (discharged in the Philippines)	458.85
James R. Pourie, first lieutenant Company D	376.74
William J. Whittimore, jr., second lieutenant Company D	149.11
Charles C. Pulis, captain Company E	375.48
John M. Kelso, first lieutenant Company E	454.90
Robert B. Mitchell, second lieutenant Company E	336.03
Paul Smith, captain Company F	1.05
C. C. Mitchell, first lieutenant Company F	390.53
N. M. Cartwell, second lieutenant Company F	475.71
John W. Green, captain Company G	213.82
James W. Wheeler, first lieutenant Company G	484.43
Oliver P. Robinson, second lieutenant Company G	363.52
Thomas Millar, captain Company H	351.82
Edmund T. Patterson, second lieutenant Company H	483.68
Walter B. Elliott, captain Company I	474.72
Burton J. Miller, first lieutenant Company I	510.07
William Winston, jr., second lieutenant Company I	299.32
James C. France, captain Company K	455.70
William C. Fitzpatrick, first lieutenant Company K	429.17
Frank R. Weeks, second lieutenant Company K	389.68
Hamilton Bowie, first lieutenant Company L	436.20
Lochlin W. Caffey, second lieutenant Company L	122.46
Richard S. Crovens, first lieutenant Company M	263.47
Thomas F. London, second lieutenant Company M	362.00
John F. Case, major (discharged in the Philippines)	237.17
Easton Burchard, first lieutenant and assistant surgeon	56.12
John Crotty, second lieutenant	307.35
Thomas Ryan, first lieutenant	547.75
Burton J. Mitchell, first lieutenant	207.96
Kenneth C. Masteller, second lieutenant	49.46

FORTY-FIRST U. S. VOLUNTEERS.

Thomas R. Marshall, captain, assistant surgeon	592.57
Edward J. Barrett, first lieutenant, assistant surgeon	426.64
Carl K. Mower, captain, regimental quartermaster	616.84
John Kennedy, first lieutenant, commissary	925.96
John E. Hemphill, first lieutenant, battalion adjutant	658.70
Frederick Koch, first lieutenant, battalion adjutant	922.97
Richard J. Fanning, captain Company A	553.14
Clarence A. McIntosh, first lieutenant Company A, captain Company E	454.23
Consuelo A. Seoane, first lieutenant Company A	526.72
Howard L. Landers, second lieutenant Company A	476.77
Louis T. Boiseau, first lieutenant Company B	526.72
Thomas G. Grandfield, second lieutenant Company B	478.64
John C. Hegarty, captain Company C	684.84
Ralph C. Caldwell, second lieutenant, Company C	426.46
Ernest A. Greenough, captain Company D	607.60
Frank J. Miller, first lieutenant Company D	505.00
Odus J. Reeder, second lieutenant Company D	473.98

	Difference.
Arthur B. Christy, first lieutenant Company E	$2[illegible]0.21
Henry T. Mitchell, second lieutenant Company E	502.10
Fred L. Davidson, captain Company F	538.86
Benjamin L. Towson, first lieutenant Company F	477.46
William R. Taylor, second lieutenant Company F	501.80
James Clark, captain Company G	550.37
Charles A. Cumings, first lieutenant Company G	473.08
Renel E. Sherwood, second lieutenant Company G (discharged in the Philippines)	656.43
James H. Martin, captain Company H	583.17
Arthur B. Christy, first lieutenant Company H	483.03
Russell Beall, second lieutenant Company H	444.87
Thomas K. Owings, second lieutenant Company H	488.09
John H. Boston, jr., captain Company I	570.15
Henry Wessel, second lieutenant Company I	712.30
Brady G. Ruttencutter, captain Company K	578.76
William M. Goodale, first lieutenant Company K	430.92
Harvey J. Simmons, second lieutenant Company K	472.24
Frank W. Glover, first lieutenant Company L	442.75
Horace N. Claxton, second lieutenant Company L	488.51
Charles W. Wadsworth, captain Company M	576.66
Herbert G. Millar, second lieutenant Company M	467.97
Joshua Jaqmetty, first lieutenant Company M	652.67
George F. Bailey, second lieutenant Company M	542.80

FORTY-SECOND U. S VOLUNTEERS.

John R. Prime, major	619.51
Fred J. Herman, captain, quartermaster	513.86
Joseph R. McAndrews, first lieutenant, battalion adjutant	534.24
William R. Molinard, first lieutenant, battalion adjutant	683.34
Robert K. Spiller, first lieutenant, battalion adjutant	678.30
Louis M. Long, captain, unassigned	673.04
Henry F. McFeely, captain Company A	515.53
Joseph H. Little, first lieutenant Company A	548.10
Horace F. Sykes, second lieutenant Company A	403.72
Joseph E. Hill, captain Company B	481.53
Harry C. McCool, first lieutenant Company B	460.40
Bruce N. Judd, second lieutenant Company B	403.17
Peter T. Riley, captain Company C	178.00
Charles H. Rossing, first lieutenant Company C	473.01
Aug. B. Warfield, second lieutenant Company C	443.01
Frank Keck, captain Company D	683.34
Theodore C. Reise, first lieutenant Company D	545.40
Frank T. Allbright, second lieutenant Company D	521.65
Duncan Henderson, captain Company E	548.94
Robert B. Hargis, first lieutenant Company E	457.53
Thomas Carl, second lieutenant Company E	692.40
Edmund Du Bois, captain Company F	666.12
Edward F. Hackett, first lieutenant Company F	529.75
James E. Abbott, second lieutenant Company F	384.73
Worthington Kautzman, captain Company G	543.27
George H. White, first lieutenant Company G	427.40
Robert A. Caldwell, second lieutenant Company G	484.04
Alfred W. Bjornstad, captain Company H	452.34
Walter H. Johnson, first lieutenant Company H	361.41
Frederick W. Stafford, captain Company I	699.72
William R. Howard, first lieutenant Company I	547.42
James M. Shallenberger, captain Company K	513.01
Charles T. Beale, first lieutenant Company K	460.73
Franklin P. Jackson, second lieutenant Company K	483.47
Joseph V. Cunningham, captain Company L	558.38
William P. Kitts, second lieutenant Company L	502.89
Charles S. Burnes, captain Company M	682.29

	Differ
Francis H. Lomax, first lieutenant Company M	$61
Morris M. Keck, second lieutenant Company M	48
Charles C. Scudmore, second lieutenant Company M	30
William D. Belt, captain, assistant surgeon	77
L. A. Griffith, first lieutenant, assistant surgeon	68

FORTY-THIRD U. S. VOLUNTEERS.

Ernest R. Tilton, captain, adjutant	68
Edward T. Donnelly, first lieutenant, commissary	68
Robert Le Masurier, first lieutenant, battalion adjutant	66
Claudius M. Seaman, first lieutenant, battalion adjutant	65
Harold S. Swann, first lieutenant, battalion adjutant	67
Frank W. Cannady, second lieutenant	46
Frank H. Grand, second lieutenant	54
William R. Beavers, captain	66
Henry A. Thayer, first lieutenant	56
James L. Elmer, second lieutenant	50
Linwood E. Hanson, captain	70
William H. Burt, first lieutenant	54
Charles C. Estes, second lieutenant	48
James W. Dutton, first lieutenant	59
Gordon Johnston, second lieutenant	49
John A. Fair, captain	61
Robert Sterrett, first lieutenant	56
John H. Truden, second lieutenant	49
John Cooke, captain	1
Albert E. Phillips, first lieutenant	41
Louis B. Chandler, second lieutenant	50
Fred. W. Mills, jr., second lieutenant	48
Harry M. Dey, captain	66
Joseph Sweeney, first lieutenant	56
William H. Wilson, second lieutenant	50
Michael E. Morris, first lieutenant	55
William O. Trenor, second lieutenant	46
Henry J. Stewart, captain	56
Frank C. Prescott, captain	11
George E. Steele, second lieutenant	45
George O. Duncan, captain	14
Lorenzo D. Gasser, first lieutenant	43
Charles F. Andrews, second lieutenant	48
Michael J. Spellman, captain	68
L. E. Polk, captain	53
Walter S. Price, first lieutenant	53
Walter M. Lindsay, second lieutenant	59
Washington L. Goldsborough, captain	68
Louis F. Leaf, second lieutenant	48
William S. Conrow, first lieutenant	54
Delbert R. Jones, first lieutenant	56
William B. Preston, captain	66
Edward O. Power, first lieutenant	55
William C. Dow, first lieutenant	67

FORTY-FOURTH U. S. VOLUNTEERS.

Henry B. McCoy, major, field and staff	45
Charles L. Furbush, captain, adjutant, field and staff	76
Edwin A. Stuart, captain, adjutant, field and staff	46
Frank R. Curtis, captain, quartermaster, field and staff	80
Michael H. Barry, first lieutenant, commissary, field and staff	36
Stephen H. Mould, first lieutenant, battalion adjutant, field and staff	67
Frederick S. Young, first lieutenant, battalion adjutant, field and staff	65
Fred L. Wilson, first lieutenant, battalion adjutant, field and staff	54
John L. Ketchan, captain Company A	51
Frank E. Lynch, first lieutenant Company A	43
John A. Bassett, second lieutenant Company A	40

	Difference.
George D. Lee, captain Company B	$530.42
Herbert L. Evans, first lieutenant Company B	428.51
Leonard L. Cook, second lieutenant Company B	315.94
James L. Anderson, captain Company C	508.74
William A. Haycraft, first lieutenant Company C	434.18
Richard H. Sutherland, first lieutenant Company C	397.07
Samuel C. Samuels, captain Company D	546.41
Richard W. Buchanan, first lieutenant Company D	427.53
Walter E. Van Houten, second lieutenant Company D	426.88
Eugene V. N. Bissell, captain Company E	683.34
Benjamin R. Hall, first lieutenant Company E	388.50
Warren Windham, second lieutenant Company E	357.65
Dana R. Weller, Captain Company F	102.52
Fred L. Dengler, first lieutenant Company F (discharged in the Philippines)	426.01
William S. Blair, second lieutenant Company F	316.56
Marion C. Raysor, captain Company G	443.81
Arthur J. Cadden, first lieutenant Company G	304.43
Ralph W. Jones, second lieutenant Company G	312.69
Thomas Leonard, captain Company H (discharged in the Philippines)	734.84
Clyde B. Parker, first lieutenant Company H	299.55
Pliny R. Strange, second lieutenant Company H	349.36
James K. Wiggins, captain Company I	657.09
William J. White, first lieutenant	490.19
Leo L. Thomas, second lieutenant Company I	403.12
Gustav F. Schlachter, second lieutenant Company I (discharged in the Philippines)	549.27
Kirwin Taylor Smith, captain Company K	391.26
R. Orville Perry, first lieutenant Company K	252.98
William E. Parsons, second lieutenant Company K	386.11
Amasa S. Crassfield, captain Company L (discharged in the Philippines)	517.94
Richard B. Going, first lieutenant Company L	435.65
George Bennett, second lieutenant Company L (discharged in the Philippines)	195.27
James L. Malley, captain Company L	491.82
John B. Heyburn, first lieutenant Company L	206.38
Harry R. Frast, second lieutenant Company L	297.62

FORTY-FIFTH U. S. VOLUNTEERS.

Theodore K. Birkhaeuser, major, field and staff	724.72
Frank E. Artand, major, surgeon, field and staff	765.58
William C. Berlin, first lieutenant, assistant surgeon, field and staff	396.51
Benjamin F. Patrick, captain, adjutant, field and staff	556.87
Nathan F. Simpson, captain, quartermaster, field and staff	583.76
David I. McCormick, first lieutenant, commissary, field and staff	515.55
Milosh R. Hilgard, first lieutenant, battalion adjutant, field and staff	478.38
Temple H. Owens, first lieutenant, battalion adjutant, field and staff	523.11
George E. Kumpe, first lieutenant, battalion adjutant, field and staff	289.80
Eugene C. Montfort, captain Company A	452.34
Arthur S. Tibbetts, first lieutenant Company A	397.44
Edgar W. Mumford, second lieutenant Company A	482.18
Allen G. Blaker, first lieutenant Company B (discharged in the Philippines)	406.43
Charles E. N. Howard, second lieutenant Company B	332.66
George W. Rickeman, captain Company C	493.07
James D. Watson, first lieutenant Company C	541.91
Edward P. Barber, second lieutenant Company C	469.62
Daniel W. Hand, captain Company D	681.66
Fred W. Morrison, first lieutenant Company D	425.04
George K. Armstrong, second lieutenant Company D	190.23
Willard M. Flynn, captain Company E	458.20
George P. Tyner, first lieutenant Company E	394.25
Oscar Danielson, second lieutenant Company E	375.76
James Ross, captain Company F (discharged in the Philippines)	215.40

	Difference.
Alfred L. Castle, first lieutenant Company F (discharged in the Philippines)	$409.00
Charles E. Dority, second lieutenant Company F (discharged in the Philippines)	416.35
Adelbert W. Cogswell, captain Company G	435.33
William E. MacKinlay, first lieutenant Company C (discharged in the Philippines)	433.00
Albert S. Odell, second lieutenant Company G	483.70
W. Lee Capps, captain Company H (discharged in the Philippines)	532.00
Charles G. Lawrence, first lieutenant Company H	193.30
Frederick G. Kelloud, second lieutenant Company H	585.14
John N. Loye, captain Company I	1.05
Roy J. Taylor, first lieutenant Company I	442.22
Edwin C. Long, second lieutenant Company I	438.75
Tom J. Rogers, captain Company K	477.33
Lewis S. Ryan, first lieutenant Company K	300.98
John B. Shuman, second lieutenant Company K	338.06
Percey Willis, captain Company L	152.25
William A. Edwards, first lieutenant Company L	361.41
George A. F. Trumbo, second lieutenant Company L	300.37
Elmer O. Worrisk, captain Company M (discharged in the Philippines)	151.20
Frederick P. Cook, first lieutenant Company M	397.13
Frederick D. Shiras, second lieutenant Company M (discharged in the Philippines)	335.91

FORTY-SIXTH U. S. VOLUNTEERS.

William Cogswell, major, surgeon, field and staff	1,026.07
Hy. H. Lee, captain, assistant surgeon, field and staff	784.65
Hy. H. Sheen, captain, adjutant, field and staff	768.35
Charles F. Worsson, captain, quartermaster, field and staff	801.33
Terrence E. Murphy, first lieutenant, battalion adjutant, field and staff	380.36
James B. Webb, first lieutenant, battalion adjutant, field and staff	551.44
William F. Herringshan, first lieutenant, battalion adjutant, field and staff	562.56
Thomas I. Muer, captain Company A	493.42
Fred T. Austin, first lieutenant Company A	561.56
George W. Earle, jr., second lieutenant Company A	465.76
David Conner, captain Company B	799.30
Richard B. Cavanaugh, first lieutenant Company B	567.89
Walter S. Wilkshire, second lieutenant Company B	413.84
Moses R. Ross, first lieutenant Company C	562.19
Sydney H. Hopson, second lieutenant Company C	515.25
Lewis Patstone, captain Company D	701.82
Frank E. Hopkins, first lieutenant Company D	544.38
James H. Johnston, second lieutenant Company D	517.86
Isaiah H. Baker, captain Company E	719.04
Charles D. Wood, first lieutenant Company E	526.32
Benjamin M. Van Wart, second lieutenant Company E	415.81
John H. Baker, captain Company F	483.00
Philip K. Sweet, first lieutenant Company F	546.91
William A. Austin, second lieutenant Company F	416.52
George Todd McConnell, captain Company G	564.06
Edward D. Powers, second lieutenant Company G	518.91
Joseph S. Hardin, captain Company H	622.02
Edward E. Philbrook, first lieutenant Company H	571.18
Theodore Greuener, second lieutenant, Company H	95.76
Samuel S. O'Connor, captain Company I	683.34
Frank S. Leisenning, first lieutenant Company I	519.64
Gustavus J. Hasson, second lieutenant Company I	19.04
Robert J. Reaney, captain Company K	664.23
William H. Clendenni, second lieutenant Company K	513.85
A. F. Cummiskey, captain Company L	683.34
Leopold Thun, first lieutenant Company L	547.91
Solomon West, second lieutenant Company L	514.85
Benjamin P. Lukens, first lieutenant Company M	644.04

	Difference.
Hugh J. B. McElgin, second lieutenant Company M	$632.74
Harry A. Ely, first lieutenant Company M	665.00
Conant S. Buttrick, first lieutenant Company M	397.07
Carlos W. Pierce, second lieutenant Company M	614.74

FORTY-SEVENTH U. S. VOLUNTEERS.

Kellar Anderson, major, field and staff	962.20
Charles M. Galbraith, captain, assistant surgeon, field and staff	559.73
James W. Gulick, captain, adjutant, field and staff	760.90
James M. Field, captain, quartermaster, field and staff	831.71
A. La Rue Christie, captain, commissary, field and staff	682.92
Casper W. Cole, first lieutenant, battalion adjutant, field and staff	721.15
George W. England, first lieutenant, battalion adjutant, field and staff	657.72
Harry T. Gray, first lieutenant, battalion adjutant, field and staff	693.84
John G. Livingston, captain, unassigned, field and staff	682.29
Harry Walsh, captain Company A	657.72
Charles L. Lanham, first lieutenant Company A	527.22
William E. Roberts, second lieutenant Company A	434.06
Charles C. McLain, captain Company B	659.17
Charles H. Morrow, first lieutenant Company B	447.94
Brice P. Disque, second lieutenant Company B	483.73
Oscar Bishop, captain Company C	519.83
Rudolph E. Smyser, first lieutenant Company C	481.64
Edwin Burke, second lieutenant Company C (discharged in the Philippines)	530.20
August C. Hart, captain Company D	677.25
Philip Yost, first lieutenant Company D	456.02
Robert C. Q. Clark, second lieutenant Company D	477.62
Arlington U. Betts, captain Company E (discharged in the Philippines)	698.42
Harvey Garrison, first lieutenant Company E	615.54
Thomas P. Murphy, first lieutenant Company F	527.56
William P. Barber, second lieutenant Company F	499.65
Lester H. Simons, captain Company G	607.32
Samuel Riggs, first lieutenant Company G	527.22
George A. Purington, second lieutenant Company G	501.76
T. R. J. Campbell, captain Company H	657.72
William Roy Harrison, first lieutenant Company H	592.47
Joseph H. Dent, second lieutenant Company H	632.74
Leonard S. Goddard, captain Company I	589.05
Edward N. Meekins, first lieutenant Company I	527.22
Thomas T. Page, second lieutenant Company I	482.96
Edward W. Terry, captain Company K	518.07
Jeno. E. Stedje, first lieutenant Company K	418.64
Henry F. Egle, second lieutenant Company K	429.52
Paul W. Harrison, first lieutenant Company L	163.86
Allen L. Briggs, second lieutenant Company L	483.73
Hugh H. Pitcairn, first lieutenant Company M	473.01
Starkey Y. Britt, second lieutenant Company M	533.65

FORTY-EIGHTH U. S. VOLUNTEERS.

William W. Purnell, captain, assistant surgeon	439.85
Aaron D. Bright, captain, adjutant	744.75
Walter D. Gatchell, first lieutenant, adjutant (discharged in the Philippines)	628.55
Frederick McC. Smith, first lieutenant, adjutant (discharged in the Philippines)	591.52
George Steunenberg, first lieutenant, adjutant	736.02
Hugh Thomason, captain	736.02
James E. Hamlin, captain Company A	660.71
Frank W. Cheek, first lieutenant Company A	440.03
Lincoln Washington, second lieutenant Company A	667.71
Alexander Richardson, captain Company B	243.35
William H. Allen, first lieutenant Company B	248.38
Green F. Marion, second lieutenant Company B	622.40
James F. Powell, first lieutenant Company C	413.25
Joseph C. Andrews, second lieutenant Company C	516.01

	Difference.
James W. Smith, captain Company D	$540.75
John H. Anderson, first lieutenant Company D	660.22
George W. Taylor, second lieutenant Company D	485.66
Leon W. Denison, captain Company E	491.82
James B. Coleman, first lieutenant Company E	355.86
William A. Hawkins, captain Company F	660.66
Charles C. Caldwell, first lieutenant Company F	427.40
William L. Gee, second lieutenant Company G	381.36
William H. Jackson, captain Company H	701.61
John K. Rice, first lieutenant Company H	531.93
Walter Green, second lieutenant Company H	612.40
Robert R. Rudd, captain Company I	544.74
Walter H. Loving, second lieutenant Company I	544.97
Jerry M. White, captain Company K	457.64
Jacob C. Smith, first lieutenant Company K	788.22
Frank R. Chisholm, second lieutenant Company K	515.99
Wilson Ballard, first lieutenant Company L	434.30
Herbert E. Gee, second lieutenant Company L	392.05
Thomas Grant, captain Company M	574.35
William H. Brown, captain Company M (discharged in the Philippines)	448.39

FORTY-NINTH U. S. VOLUNTEERS.

Robert Gage, major	808.90
William J. Vaiden, captain, adjutant	622.05
Gilbert C. Smith, captain, quartermaster	592.56
William O. Warmsley, captain, assistant surgeon	592.56
William D. Pritchard, first lieutenant, battalion adjutant	657.72
Isaac W. Moloney, first lieutenant, battalion adjutant	683.34
George R. Grau, first lieutenant, battalion adjutant	15.75
David J. Gilmer, captain Company A	649.95
William R. Staff, captain Company B	184.48
Thomas Campbell, captain Company C	474.57
Floyd H. Crumbly, captain Company D	642.72
Emmanuel D. Bass, captain Company E	551.25
Frank R. Steward, captain Company G	542.64
William D. Edwards, captain Company H	822.38
Robert G. Woods, captain Company I	647.92
William H. Butler, captain Company K	475.02
Edward L. Barker, captain Company L	432.63
William M. Hawkins, captain Company (?)	425.46
Hamilton H. Blunt, captain Company (?)	659.87
Leon H. Jordan, first lieutenant Company A	344.91
William Blaney, first lieutenant Company B	499.21
Wyatt Huffman, first lieutenant Company C	788.22
James H. Thomas, first lieutenant Company D	413.26
Charles Perry, first lieutenant Company E	606.39
Thomas C. Butler, first lieutenant Company F	657.72
Charles Spurlock, first lieutenant Company G	365.87
Lafayette A. Tillman, first lieutenant Company I	336.92
William McBryar, first lieutenant Company K	583.51
Macon Russell, first lieutenant Company L	722.97
Ebbert W. Maden, first lieutenant Company M	398.88
Henry T. Walls, second lieutenant Company A	227.27
Robert Gough, second lieutenant Company B	228.31
George E. Payne, second lieutenant Company D	395.06
Leander W. Hayes, second lieutenant Company E	463.76
James M. Dickinson, second lieutenant Company F	.87
Guilford E. Campbell, second lieutenant Company G	361.71
Horace F. Wheaton, second lieutenant Company H	516.01
John R. Blackburn, second lieutenant Company I	361.70
George A. Williams, second lieutenant Company L	374.54
William E. Tyler, second lieutenant Company M	407.59

The total of the foregoing amounts is $530,943.61.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 442.

PROTEST OF BUSINESS COMMITTEE OF WYANDOTTE TRIBE AGAINST REMOVAL OF RESTRICTIONS FROM THEIR LANDS.

Mr. TELLER presented the following

LETTER FROM THE BUSINESS COMMITTEE OF WYANDOTTE TRIBE, QUAPAW AGENCY, INDIAN TERRITORY, PROTESTING AGAINST THE PASSAGE OF ANY BILL REMOVING THE RESTRICTIONS FROM THEIR LANDS.

APRIL 21, 1908.—Ordered to be printed.

QUAPAW AGENCY, IND. T., *April 16, 1908.*

Hon. Senator TELLER,
United States Senate, Washington, D. C.

HONORABLE SIR: We, the undersigned members of the Quapaw Wyandotte, and Seneca members of other tribes of Indians in the Indian Territory, do hereby submit our solemn protest and objections against the passage of any bill by your honorable body removing the restrictions from our lands. We hold certificates of contracts from the Government of the United States; we are opposed to taxation; we have never voiced our intention of becoming citizens of the United States, but we do most respectfully ask your valuable assistance to aid us in protecting us in our rights, which the Government of the United States has pledged to do for us under the many treaties, which we will try to present to your honorable body.

In order to write a correct statement it will be necessary to refer to the organization of the Territory of the so-called Oklahoma. The object of the bill is to provide a State or a Territorial form of government for the country heretofore held exclusively for Indians, and now known as the Indian Territory, being the region south of Kansas, west of Missouri and Arkansas, and bounded on the south by Texas and on the west by Texas and New Mexico. More than three-fourths of it consists of tracts called reservations, which have been set apart for the use of Indian tribes or bands, there being twenty such reservations occupied by the thirty-three different bands. Five of these reservations, equal in extent to nearly half of the Territory, are owned and inhabited by the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, who constitute more than three-fourths of its population.

Delegates representing these five nations have memoralized Congress and have appeared in person before the committee in opposition to the bill, and to any other measure of like nature it is objected—

First, that the bill provides for a legislative assembly, to consist of members "having the qualification of voters," i. e., according to the

bill "all citizens of the United States, of the age of 21 years and upward, who shall have lawfully resided in the Territory one year prior to the passage of the act." This would embrace a few whites who are now in the Indian Territory "lawfully," as shown by the annual reports of the Commissioner of Indian Affairs, deducting from that number white citizens of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole, and other tribes, as shown by Report No. 95, H. R., second session Forty-fifth Congress, which leaves a number of whites not citizens or members of said tribes to whom a share in our government would be given, without the consent of our tribes and contrary to the spirit and meaning of their treaties, namely, first article Choctaw and Chickasaw treaty, 1855, revision of Indian treaties, 276; seventh article, Choctaw and Chickasaw treaty, 1866 (ibid., 289); tenth article Choctaw and Chickasaw treaty, 1866 (ibid., 292); fifth article Cherokee treaty, 1835 (ibid., 69, 70); thirty-first article Cherokee treaty, 1866 (ibid., 97); fifteenth article Creek and Seminole treaty, 1856 (ibid., 111); twelfth article Creek treaty, 1866 (ibid., 121); ninth article Seminole treaty, 1866 (ibid., 817).

Second, the eighth section provides for a judiciary with the jurisdiction now pertaining to United States courts in matters applicable to the Indian country, and "such other jurisdiction not inconsistent with this act as may be conferred by the laws of the Territory."

This provision disregards the restrictions of the treaties of 1866, above referred to, all of which provide that the legislation of the Congress "shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs," and it virtually abrogates the guarantees of exclusive jurisdiction in the treaties above cited prior to 1866. These provisions, it is urged by the Indians, violate their ancient law and custom of tenure in common, as well as the provisions of their treaties with the United States. In view of the twofold character of these various objections, it is proposed to consider: First, the binding force of treaties, the power of Congress to change or to abrogate them, and, if such power exists, under what circumstances it is proper to exercise it; second, whether sufficient cause exists for abrogating or annulling treaties with the tribes in the Indian Territory, and in that connection; third, to what extent the bill under consideration would violate such treaties, and, fourth, how far such measures are justifiable or expedient. First, binding force of treaties. The first expression of opinion in any official quarter after the adoption of the Constitution, as to the binding force of Indian treaties, is found at the close of Marshall's Life of Washington, in volume 2, page 4, of notes. A treaty had been made with the Creeks in August, 1790, containing a secret stipulation for the introduction of goods, duty free, for the benefit of the trading establishment of the principal chief, McGillivray. Respecting this article, President Washington consulted his Cabinet before signing the treaty. The Secretary of State, Mr. Jefferson, was of opinion that the stipulation might be safely made. He said that "a treaty made by the President, with the concurrence of two-thirds of the Senate, was a law of the land and a law of a superior order, because it not only repeals past laws but can not itself be repealed by future ones, the treaty, then, will legally control the duty act and the act for licensing traders in this particular instance." From this opinion Chief Justice

Marshall adds, "there is no reason to suppose that any members of the Cabinet dissented."

It is worthy of especial notice as relating to the first treaty ever negotiated under the present Constitution, in direct contradiction to Mr. Jefferson's opinion, is the decision of the Supreme Court in the Cherokee tobacco case (11 Wallace, pp. 616–624), upon the question whether certain provisions of the United States revenue laws extending to "articles produced anywhere within the external limits of the United States" annulled a right given the Cherokees in article 10 of their treaty of 1866 to sell any of their manufactured products without paying any tax which is now or may be levied by the United States. The court decided that an act of Congress may supersede a prior treaty; that the same principle which applied in Taylor *v.* Morton (2 Curtis, 454), to treaties with foreign nations applied with equal force to treaties with Indian tribes which could not be more obligatory. In other words, if a treaty points one way and a subsequent act of Congress points another, the courts are bound to conform to the act of Congress regardless of inconsistent treaty stipulations. The opinion of the dissenting judges, Bradley and Davis, rests on points not material in this connection, and does not conflict with the doctrine laid down in Taylor *v.* Morton. That case turned on a violation under the revenue laws of a treaty stipulation with Russia, admitting her goods on as favorable terms as like articles from other countries. "The Constitution," said the court, "has made treaties a part of our municipal law, but it has not assigned to them any particular degree of authority nor declared whether laws so enacted shall or shall not be paramount to laws otherwise enacted; no such declaration is made as to the Constitution itself," and when it became necessary to determine whether an act repugnant to either Constitution or treaty was an operative law, the question could only be answered by considering the nature and object of each species of law. After speaking of municipal as distinguished from public law, and of the importance of preserving national faith, the court says the question is not whether the act of Congress is consistent with the treaty, but whether that is a judicial question to be here tried.

The general drift of opinion in the early days of the Republic respecting the rights and duties and powers of Congress in connection with treaties is shown by the debates in the House of Representatives in 1796 on the treaty made in the preceding year with Great Britain, known as "Jay's treaty," debates characterized by Colonel Benton as the "groundwork of high Constitutional knowledge," standing forth as the "first class which Congressional history has afforded." They were started by a resolution calling upon the President for papers relating to the treaty, and were chiefly confined to the question whether or not the assent of Congress was in any case essential to the validity of a treaty made with the sanction of the President and the Senate. In this debate Mr. Gallatin said a law could not repeal a treaty, "because a treaty is made with the concurrence of another party, a foreign nation, that has no participation in framing the law—it is a sound maxim in Government that it requires the same power to repeal a law that enacted it." Several treaties have been concluded with Indian tribes under the present Constitution. These treaties embraced all the points which were now made a subject of contest, settlement of

boundaries, grants of money, etc.; when ratified by the President and Senate they had been proclaimed as the law of the land. They had not even been communicated to the House, but the House, considering them as laws, had made the appropriations as matters of course, as they did in respect to other laws. It was not pretended that the Constitution made any distinction between treaties with foreign nations and Indian tribes; a treaty is a compact; it is superior to a law. This is the distinction between a treaty and a law which renders a treaty paramount to a law. A treaty is a compact between two States, which can not be departed from by one without violating the faith of that State and the rights of the other. (Ibid.)

It is said that "a subsequent law can repeal a treaty." We deny the fact. Whenever a law was proposed declaring a treaty void, the House acted not as a legislative body but judicially. The only question that could occupy its attention when a treaty is to be declared void is whether, under all the circumstances of the case, the treaty is not already destroyed by being violated by the nation with whom it is made, or by the existence of some other circumstance, if other there can be, the House determining this question, Is the country any longer bound by the treaty? Has it not ceased to exist? The nation passes in judgment on its own contract, and this from the necessity of the case, as it admits no superior power to which it can refer for decision. If any other consideration moved the House to repeal a treaty, it can only be considered in the light of a violation of a contract acknowledged to be binding on the country. We do not believe the Constitution gave the House of Representatives any direct share in the treaty-making power yet that it had an indirect control over a certain class of treaties, meaning such only as could not go into effect without the passage of some act of Congress. (Ibid., 529.) According to the doctrine maintained by the advocates of this bill there have never been any valid treaties between the United States and foreign nations since the organization of the Government, for no law of Congress has reenacted their articles. as is attempted by this bill, or by a general enactment pronounced them to be the law of the land; for instance, treaties of 1795 with Great Britain and Spain. Congress passed laws making appropriations not to give validity to treaties, but simply to carry them into effect. The House may, in the exercise of power over some collateral matter (as money), interfere with and perhaps prevent the fulfillment or execution of a treaty, but they do it by a violation of public faith and not by invalidating a treaty which bound it. They may refuse to grant the means necessary to perform the contract, but they can not decree it to be no contract. (Ibid., 541.) It is a novel doctrine to pass a law declaring a treaty void. If Statehood be forced upon us, it will be considered a novel thing—tantamount to a State declaration to annul a treaty—and there ought to be the grounds annexed to it which led to the measure. (Ibid., 2122.)

We know of no precedent of a legislature repealing a treaty. It is therefore an act of a peculiar kind, and it appears to us necessary that Congress should justify it by a declaration of their reasons. No ground is assigned for the proposed infraction of the treaties with the tribes in the Indian Territory. It is not pretended that the Indians have not executed their part of the contract embodied in those treaties. They gave up large bodies of valuable lands, and the material part of

the price of those lands was the guarantee of certain rights. It is now proposed to repeal those guarantees, not for any failure of consideration on their part, but on the ground that their welfare and the welfare of the whites requires that the right thus guaranteed be annulled. It is proposed in the bill (1) to open our country to white settlements; (2) to extend the laws of the United States and the jurisdiction of United States courts over us; (3) to abolish tribal relations and make us citizens of the United States; (4) to change our land titles from a tenure in common to a tenure in severalty. These measures are urged as essential to the welfare alike of the Indians and the whites. The welfare of the whites who made the contract and have received the price paid by the Indians for their immunites need not be considered in determining the question whether or not the contract should be abrogated, unless, indeed, it should appear that such abrogation was absolutely necessary as a matter of self-preservation that the destruction of the rights of 60,000 Indians was essential to the safety of 40,000,000 whites, which will not be pretended in any quarter.

So far as the Indians are concerned, the evidence is overwhelming and conclusive that some, at least, of the changes proposed instead of benefiting are calculated to destroy their race, and it will be seen that they are all in violation of the very essence of the agreement under which the Indians were induced to cross the Mississippi. As far back as 1822, Mr. Calhoun, then in charge of Indian Affairs as Secretary of War, called attention to the evil effects of surrounding Indian tribes with a dense white population. "In state," he says, in reply to a resolution of the House of Representatives, "tribe after tribe will sink with the progress of our settlements and the pressure of our population into wretchedness and oblivion—such has been their past history." (Am. State Papers, 2d Ind. Aff., 276.) It is the imperative duty of the Government to adhere to its treaty stipulations with the tribes of the Indian Territory and to protect them against the attempts being made upon their country for the settlement of the whites. To repudiate either directly or by any indirection your solemn treaty obligations with this feeble people would be dishonor, meriting the scorn of the civilized world. The passage of any law for the organization of a Territorial Government not acceptable to the tribes (which have long since ably demonstrated their capacity for self-government), and which would open their country for the ingress of the whites, would, in our opinion, be such an infraction of your obligations. The time has not arrived for throwing this country open for settlement. Indians in States are regarded "as outcasts and intruders, a prey for anybody strong or cunning enough to defraud them." Treaties of 1866 with the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, who then owned all of what is now known as the Indian Territory except about 200,000 acres in its northeast corner, and, as one of the results of the war, were required to cede a portion of it for the benefit of their brethren in Kansas, who, as it will be seen, had been brought to the verge of ruin by the system of allotments and the dissolution of their tribal relations.

Practically there was a repetition in 1866 of what had occurred between 1830 and 1840. Then a country west of the Mississippi had been purchased for Indians living east of that river. In 1866 part of the south half of that region had to be repurchased for Indians living in the north half of it. The limits of the region guaranteed to the

emigrant tribes forever had already been curtailed, and the object of the treaties of 1866 was to provide for a further curtailment. The door was opened by the then proprietors of what is now known as the Indian Territory to over 8,000 Indians from the State of Kansas, including between 500 and 600 for whom a home was purchased in February, 1867, from the Senecas, Shawnees, and Quapaws, which brings to notice the treaties of 1867 with those bands of the one part, and also with the Wyandotts, Ottawas, and confederated Peorias, all in one instrument, concluded February 23, 1867, and with the Sacs and Foxes of the Mississippi and the Pottawatomies about the same time, all having the same object—the securing of homes among Indians in the Indian Territory for Indians who could not live in security among white people—who were, in fact, clamorous to get out of the white man's reach.

Among the fifteen tribes visited by Commissioner Manypenny in 1853 there was one, the Wyandottes, who, in case a Territory was organized, wanted to change their system, and "conform to the new order of things." In January, 1855, they made a treaty, which declares them sufficiently advanced in civilization, and that "being desirous of becoming citizens, their relations as an Indian tribe shall be dissolved and terminated," except so far as their continuance may be necessary for certain purposes, and such of the Indians as might desire it were to continue on a tribal footing. Those who wished it were to be citizens; their lands were to be divided. Those who were able to take care of themselves were to receive patents in fee simple.

In other cases lands were to be inalienable for five years; and after that, could be sold only with the consent of the President. It is doubtful whether any better subjects could have been selected for such an experiment. As far back as 1809 their progress in agriculture had attracted attention. (Morse's Rep. on Ind. Affs., Appendix, p. 16.) A report to Congress January 15, 1820, places them in the front rank among Indians who had made advances in civilization (2d Ind. Affs., 200), and Judge Burnet, in his "Notes on the Early Settlement of the Northwest," speaks from personal observation of their rapid advances in civilization from 1821 to 1828 (pp. 386–387) but the experiment was a signal failure. The treaty was proclaimed (H. Rept., 1882) March 1, 1855. Eleven years afterward a special agent was employed to investigate their affairs, whose statement appears in the annual report of the Indian Office for 1866. He says:

> By far the larger part of the Wyandottes prefer to continue the tribal organization. They have long been absent from the lands patented to them and are living in the Indian Territory. Many others who have lived and acted as citizens desire to return to the tribal state outside of the encroachment of white settlers. No matter how much they may try to live like white people, the whites think Indians have no rights white men are bound to respect. They are constantly robbed of stock and other property, etc. (p. 254).

He adds that both the citizen and Indian parties wish to remove to the Indian Territory, and that those constituting that "Indian party" claim to be the tribe, and insist that the Government should ignore the others. (Ib.)

In February, 1867, a treaty was made which, after stating that some of the Wyandottes, having sold their land, are still poor, and that others had become citizens who were not fitted for the responsibility of citizenship, proceeds in the thirteenth article to provide a home for them to be held "in common," and for a registration "which shall show the

names of all who desire to be and remain Indians and in a tribal condition." (Revision of Indian treaties, p. 840, 844.) According to prevailing opinions and theories this was a step backward, and ought to have an injurious effect. Practically it worked precisely the other way. The annual reports from 1871 to 1877 show a steady and continuous improvement resulting from restoration to the tribal condition and tenure in common. There are other facts relating to this tribe worthy of serious attention. The report for 1855 shows that on the pay roll for 1854 there were 554 Wyandottes. In 1872 (p. 38), they number at present 222 souls; ten years ago there were 435. Thus, in 1862, seven years after they were made citizens and their lands were divided, the reduction in their number was 119—more than one-fifth—and this reduced number sustained a further reduction during the next ten years of nearly one-half; but of the fact that these Indians decreased in numbers while living in Kansas among white people and that their present condition is more favorable to longevity there can be little question.

The removal of the Ottawas from Kansas to the Indian Territory is worthy of especial notice, as they had, with the evident intention of remaining permanently in Kansas, appropriated, by the treaty of 1862, 20,640 acres of their land for the support of a school for their children. The school was established according to the treaty, but was ultimately managed, as shown by the Indian Office report for 1872, page 87, "wholly for the benefit of the whites," being "of no assistance or advantage whatever to the Indians." An act of Congress approved June 10, 1872, required the Secretary of the Interior to have the school property appraised and to take possession of it for the benefit of the Indians. The property was appraised at $108,318.55, but the persons holding it refused to turn it over. Another act was passed March 3, 1873, providing for a special commission to examine and dispose of the matter. Whether the Ottawas ever derived any further benefit from the fund of which they were thus deprived does not appear in the subsequent reports. Superintendent Hoags, in whose district they live, speaks in the reports for 1871, page 463, of the injustice they have suffered from the loss of their school property in Kansas as calling loudly for redress (p. 463). The Peorias and Miamies were also provided with homes in the country of the Senecas and Shawnees by the treaty of 1867. Both tribes in 1854 had consented to a partition of their lands, and both had become considerably reduced in numbers. The Peorias removed to the Indian Territory soon after the treaty of 1867 and are described by the Commissioner in 1872 as intelligent, well advanced in civilization, and successful in raising crops (p. 38). The Miamies, then still in Kansas on their allotments, are said, on page 32 of the same report, to be "greatly demoralized, their school has been abandoned, and their youth left destitute of educational advantages." The Commissioner adds that "considerable trouble has been for years caused by white settlers locating aggressively on lands belonging to these Indians, no effort for their exclusion having been thus far successful."

One fact in connection with Miami lands, which is stated on pages 144 and 145 of the report for 1874, is worthy of notice. A portion of them, amounting to 2,493 acres, were advertised for sale by order of the Secretary of the Interior on the 4th November, 1873; 165 acres were sold, for which the amount received was $1,823.56, from which,

of course, was deducted the expense incurred in advertising. By a curious coincidence, the cost of advertising amounted to precisely the same sum. The land brought $1,823.56 and the advertising bills were $1,823.56. It is true that only 165 acres were sold out of 2,493 offered, but it must have struck the Miamis that selling land was expensive, if 75 cents an acre had to be paid for advertising it. In March, 1873, an act was passed to abolish the tribal relations of the Miamis, under which separate lists were to be made, on the one hand of those who wished to become citizens, and on the other hand of those desiring to join the Peorias in the Indian Territory. Under that act, out of the remnant of 106 representing the 500 Miamis who emigrated in 1846, 34 became citizens and 72 were placed on the Indian list to join the "United Peorias and Miamis." The good effect of this consolidation has been seen in the energy with which they have engaged in enlarging old and making new improvements. They have good houses and barns and many large farms well stocked with cattle, horses, and hogs. Their children have attended school with regularity, the attendance aggregating 87 out of a population of 202 (p. 103).

The statistics prove that the only "real progress in civilization" ever made by any considerable number of North American Indians has been made by those holding land in common, a fact which seems to have been completely ignored by the board and by the several heads of the Indian Bureau and Indian Department who have so often recommended the division of Indian lands. The history of Indian legislation from the first settlement of the country shows that restrictions upon alienation were meant for the benefit of the Indian, having their origin in the desire to guard against danger from the designs of evil-disposed white men. The wisdom of retaining those restrictions and the ancient safeguard of tenure in common as a protection against fraudulent devices, the undersigned can not doubt, will be appreciated by every member of Congress who carefully examines the subject. Such examinations can not fail to show the evils of the system and of the proposed disintegration by making citizens of such tribal members as may desire it, which can only serve to stimulate efforts in behalf of a few individuals to divide national funds held for the good of the whole.

The conclusions arrived at by us are: (1) That the bill under consideration conflicts with existing treaty stipulations; (2) that while it requires justification reasons which commend yourselves to the principles of equity and good conscience, particularly where the parties to the compact with the United States are weak and powerless and depend solely on the good faith of the Government; (3) that no such reasons exist for violating the treaty stipulations which reserve the Indian Territory exclusively for Indians and which secure to the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles and other tribes the right of self-government under the restrictions of the United States Constitution; (4) that even if there were no opposing treaty stipulations—no objections resting on good faith—it would be unwise and impolitic to throw the Indian country open to white settlers without the consent of the Indian owners; (5) that while official recommendations, some of them entitled to the highest respect, are strongly in favor of making Indians citizens of the United States, transferring their land titles from the national tenure in common to the individual

tenure in severalty, experience has shown that in the great majority of cases such measures instead of benefiting have proved injurious to the Indian; (6) that experience fully demonstrates that the holding of their lands in common by the Indian tribes is an effectual safeguard against the worst effects of Indian improvidence. Apart from any considerations of justice or humanity, it would be unwise and unstatesmanlike to adopt measures which, by destroying that safeguard, would be calculated to reduce the great mass of them, in opposition to their own earnest protests, to a state of hopeless penury and degradation.

Respectfully submitted.

A. A. MUDEATER,
J. R. ROBITAILLE,
L. J. FISH,
Business Committee of Wyandotte Tribe.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 446.

JOHN A. NORRIS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN A. NORRIS AGAINST THE UNITED STATES.

APRIL 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 21, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional No. 10942-R. John A. Norris *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay whilst claimant was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill No. 5949, for proceediegs and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 13th day of April, 1908.

Messrs. George A. & William B. King appeared for the claimant, and the Attorney-General, by John Q. Thompson, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $108.83. This action was reported to Congress by the Secretary of the Treasury for appropriation. In appropriating for said allowance (and others of like character) Congress made the following proviso:

That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the

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That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the

filing of the petition in the Court of Claims upon which the judgment was rendered, which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claim.

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong, and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due, and then paid to John A. Norris, out of said appropriation, the sum of $29.10, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which John A. Norris would have been entitled under the decision in United States against Strong had Congress not prohibited the payment of the same, was $79.73.

Subsequent appropriation statutes have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The claimant is a citizen of the United States, a captain on the retired list of the United States Navy, and a resident of the city of Washington and District of Columbia. His claim, under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656), was adjusted by the accounting officers, reported to Congress, and appropriated for as alleged in the petition.

The amount found due John A. Norris by the accounting officers under said decision was $108.83; the amount paid him was $29.10; the amount suspended under the proviso of the act of Congress approved September 30, 1890, and which still remains unpaid is seventy-nine dollars and seventy-three cents ($79.73).

BY THE COURT.

Filed April 20, 1908.

A true copy of the findings of fact as filed by the court.

Test this 21st day of April, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 447.

GEORGE H. BELLAMY, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF GEORGE H. BELLAMY, ADMINISTRATOR OF JOHN H. THEES, DECEASED, AGAINST THE UNITED STATES.

APRIL 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 21, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 11579. George H. Bellamy, administrator of the estate of John H. Thees, deceased, *v.* The United States.]

STATEMENT OF THE CASE.

Senate bill 5050 was referred to the court April 26, 1904, by resolution of the United States Senate, under an act of Congress, approved March 3, 1887, known as the Tucker Act.

["Fifty-eighth Congress, second session.]

"A BILL For the relief of George H. Bellamy, administrator of the estate of John H. Thees, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury of the United States not otherwise appropriated, to George H. Bellamy, administrator of the estate of John H. Thees, deceased, of Brunswick County, North Carolina, the sum of seven thousand five hundred dollars, in full compensation for salt and a salt factory taken and used by the United States military authorities after the close of the late war of the rebellion."

In a petition filed on the 4th day of April, 1905, claimant makes the following allegations:

That claimant's decedent, John H. Thees, was loyal to the Government of the United States throughout the civil war and during said time was a resident of Brunswick County, State of North Carolina.

That during the occupation of that locality by the United States troops the following items of property owned by said decedent were taken from his premises by the officers of the United States Government and appropriated to the use of the United States:

1,500 bushels of salt, valued at $3 per bushel	$4,500
Three houses taken and removed by the troops and used by the United States Government, valued at—	
Lumber	1,300
Bricks	500
Salt pans, valued at	1,200
Being a total valuation of	7,500

The said salt factory and works, bricks, mill, and salt were taken and appropriated and used by said United States troops in 1865, after the close of the war, some time after the capture of Southport by troops from Fort Johnson, in said city of Southport (then Smithville).

On the 8th day of April, 1908, the case was brought to a hearing on its merits.

Messrs. Hayden & Yarrell appeared for plaintiff and the Attorney-General by Percy M. Cox, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the Government.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. John H. Thees, deceased, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, for the use of the Army, took from the claimant's decedent in Brunswick County, State of North Carolina, property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of eighteen hundred and twenty dollars ($1,820), no part of which appears to have been paid.

III. The claim herein was never presented to any officer or Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no satisfactory reason is adduced showing why the bar of any statute of limitation should be removed or which shall excuse the claimant for not having resorted to any established legal remedy.

BY THE COURT.

Filed April 13, 1908.
A true copy.
Test this 21st day of April, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 448.

MEMORIAL PROTESTING AGAINST LEGISLATION AUTHORIZING ISSUANCE OF FEE-SIMPLE PATENTS FOR INDIAN ALLOTMENTS, ETC.

Mr. CURTIS presented the following

MEMORIAL BY S. M. BROSIUS, AGENT INDIAN RIGHTS ASSOCIATION, PROTESTING AGAINST LEGISLATION AUTHORIZING THE ISSUANCE OF FEE-SIMPLE PATENTS FOR INDIAN ALLOTMENTS AND SUBJECTING THEM TO TAXATION AS A PUNISHMENT TO DRUNKARDS AND TO INDIAN PARENTS WHO REFUSE TO PERMIT THEIR CHILDREN TO ATTEND SCHOOL.

APRIL 22, 1908.—Ordered to be printed.

WASHINGTON, D. C., *April 22, 1908.*

To the Senate of the United States:

The Secretary of the Interior and the Commissioner of Indian Affairs urge upon Congress (H. Doc. No. 790; S. Doc. No. 395) the desirability and need of securing authority of law to issue a fee-simple patent to any Indian allottee not now authorized to alienate his land, who, after warning "persists in disobedience to the laws of the State * * * or of the United States," and when such patent is issued all restrictions as to sale, incumbrance, or taxation of the allotment shall be removed.

The reasons advanced by these officials as showing the need for the proposed legislation are twofold: First, in cases where parents refuse to permit their children to be educated by attendance at school, and, second, to such Indians as persist iu the habit of drunkenness.

Practically all the 75,000 trust patents issued for lands allotted Indians contain the provisions whereby the United States contracts that it "does and will hold the land thus allotted for the period of twenty-five years in trust," * * * at the termination of which period it will issue a patent in fee simple free of all incumbrances.

While to execute a final patent to allottees under the conditions mentioned partakes of the nature of a concession, it is evidently intended in this instance as a penalty, since it is in violation of the terms of the trust patent, which provide that the land shall not be taxable during the life of the trust. It is proposed to impose a penalty for an offense which has not been established by a conviction in a properly constituted court. The judgment is to be pronounced by the Indian Office, which must depend chiefly for its information upon its employees in charge of the allotted Indians, who are liable, as experience has shown,

to be guided by their prejudices, which may subject the allottees to great injustice. It evidently will be safer to leave the enforcement of compulsory education laws to State authorities, since it is the interest of the State to educate its inhabitants; but in the event of failure on the part of the State to execute its laws, it is believed the Federal Government can step in under present statutes and invoke its authority, since it has reserved its dominion over Indians in the enabling acts admitting the various States into the Union.

That class of allottees who may refuse to permit their children to be educated is evidently composed of the most ignorant Indians, who will be the least able to protect their property interests, and, if given power to dispose of their allotments, their holdings will be soon dissipated and their families impoverished and less concern for educating their children than before.

In the case of drunkards the proposed law would be welcome oftentimes by them, since it would afford the opportunity through funds derived from the sale of their lands to satisfy their thirst for strong drink, so that in neither class of cases is it at all likely that the object sought for be secured, but on the other hand the allottee would undoubtedly sink to a lower level in ignorance and drunkenness.

The "Burke Act," approved May 8, 1906, which was urged by the Government officials, provides for granting a fee-simple patent to an Indian who is competent and capable of managing his allotment, and the Commissioner of Indian Affairs (Annual Rept., 1907) states that the safest test of competency is the "* * * industry and thrift of the applicant * * * to justify the Government in trusting him with his own land."

While it seems that capability and competency have been heretofore the requisites to entitle an allottee to full control of his lands, to be bestowed by way of reward and honor on highly deserving Indians, it is now proposed to force similar control of their allotments upon *incompetent* and *incapable* Indians as a punishment, a penalty, to be inflicted upon lawbreakers and drunkards. The mere statement of the case shows its unreasonableness.

Protest is made against abandoning the humane policy followed for over a quarter of a century of protecting those classes of allottees most in need of aid, and adopting a course that will make subject their homes to alienation and forfeiture and reduce their families to penury.

S. M. Brosius.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 449.

ATTENDANCE OF MEMBERS OF FOREST SERVICE AT MEETINGS AND CONVENTIONS DURING 1907.

LETTER

FROM

THE SECRETARY OF AGRICULTURE,

TRANSMITTING,

BY DIRECTION OF THE PRESIDENT AND IN RESPONSE TO SENATE RESOLUTION NO. 157, INFORMATION IN REGARD TO THE ATTENDANCE OF MEMBERS OF THE FOREST SERVICE AT MEETINGS AND CONVENTIONS DURING THE YEAR 1907, ETC., AND SHOWING THAT A STATEMENT WITH FULL DETAILS AS CALLED FOR BY THE RESOLUTION IS BEING PREPARED.

APRIL 28, 1908.—Referred to the Committee on Agriculture and Forestry and ordered to be printed.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, April 27, 1908.

To the Senate:

By direction of the President, in pursuance of Senate resolution No. 157, I have the honor to say that a statement showing in full the attendance of members of the Forest Service at meetings and conventions during the year 1907, with full details as called for by the resolution, is being prepared as rapidly as possible.

It is customary for users of the national forests, both stockmen and others, to request the attendance of forest officers at their gatherings, in order that questions concerning the methods of regulating the use of the forests may be adjusted with the least possible friction, in a spirit of friendly cooperation, and with reference to the best interests of all concerned. It is also customary for forest supervisors to hold meetings with local stockmen as the most expeditious and satisfactory means of arranging allotments of range and settling range disputes. By far the greater number of these meetings and conventions are attended only by local officers, so that to present the information called for by the resolution it is necessary to receive special reports from all chief inspectors and forest supervisors. These have been called for

by telegrams sent to 123 forest officers. It will also be necessary, in order to ascertain the expense involved, to gather the data from large numbers of vouchers in the Treasury. The work will be pushed with all possible diligence, and a final report should be ready in about ten days.

Since the specific and detailed information called for by the resolution necessarily involves so much labor that it can not be completed at once, I gladly take the present opportunity to outline briefly but comprehensively the objects and methods of the Forest Service as to attendance upon meetings and conventions of all kinds.

Members of the Forest Service attend meetings, official or unofficial, for three purposes:

(1) Improvement of the efficiency of the national forest administration through instruction of forest officers in their duties and conference with each other concerning their work.

These are official meetings of the Forest Service. They are schools of instruction or institutes, at which practical difficulties of administration are discussed, in the light of actual experience, to the end that the methods which have been found most desirable may be brought out, judgment trained, standards raised, and practice made uniform along the best lines. These meetings have immensely increased the efficiency of forest officers and the practical usefulness of the national forests. Ranger meetings are arranged by each supervisor at such times as the men can be brought together most advantageously, and it it now planned that every supervisor shall hold one such meeting each year. Other meetings bring together supervisors; others again inspectors.

When possible instruction is given by superior officers from the six inspection district headquarters or from Washington. Such officers either attend a considerable series of different meetings, with dates so arranged as to permit of a regular tour of instruction, or make their attendance incidental to the transaction of other public business. In certain cases such meetings are called with special reference to the convenience of the forester or other administrative officers at some point where the presence of one of these officers is required by other business, as, for example, when they are invited to attend some convention interested in national forest administration. Many meetings, however, are arranged without involving a permanent record in Washington. Until, therefore, the reports from forest supervisors, which I have called for by telegrams, can be received, no detailed statement concerning these meetings can be made. Presumably about fifty such meetings were held during 1907.

(2) Forest officers attend meetings of users of the national forests to learn their views, discuss their needs, and explain the objects and methods of the Government.

Such meetings include local informal gatherings, meetings of regularly organized associations, local, State, or national, and conventions representing interests affected by the national forests. To refuse such opportunities for mutual conference, for the removal of misunderstandings, and for the promotion of action along lines approved, supported, and modified by public sentiment I should consider a serious mistake in judgment. The [illegible]lt of such conferences has been to remove misunder[illegible]ition on the part of users of the forests, either th[illegible] they had just cause of complaint and remo[illegible]h recognition on the part of

the users themselves that their demands were inconsistent with the greatest good to the greatest number. So commonly at these conferences has dissatisfaction been replaced by approval of the course of the Forest Service that it has been assumed at times that the result was due to some form of coercion or manipulation.

To the best of my knowledge and belief such a charge is altogether without foundation, nor have any facts to establish such a charge, beyond the unsupported assertion of a belief that the charge was true, ever reached my attention. If any facts exist tending to show the stifling of public opinion by acts of forest officers, I earnestly hope that they will be brought forward. This matter was investigated by the Committee on Expenditures in the Department of Agriculture, upon the basis of charges made during the second session of the Fifty-ninth Congress. The findings of the committee were presented on March 1, 1907, in House Report No. 8147, second session, Fifty-ninth Congress, pages 22–27.

Many of these meetings are of so local a character that no official record of them is preserved in the Washington office. The stockmen of a county, the sawmill owners of a valley, or some similar body of citizens hold a meeting to discuss their joint interests and invite the forest supervisor to be present. Naturally his attendance is incidental to his duty of administering his forest in the best interest of the public. If, however, the meeting is that of a large body of forest users, invitations to be present are generally received by one or more of the chief administrative officers and experts of the service. So far as possible it has been my policy that such invitations should be accepted, and in the absence of occasion for changing the practice it is emphatically my purpose to continue it. If it were necessary to do so I should consider it wise for representatives of the Forest Service to seek such opportunities to come into direct touch with those with whom it has business dealings, or those whose interests the forests serve. In point of fact, however, it is not necessary to seek the opportunity; on the contrary, it is impossible with the present force available to accept more than a fraction of the invitations received.

As a result of its business dealings with users of the forests, the Government received last year over $1,570,000. From the standpoint of ordinary business practice it would be a most short-sighted economy to begrudge the relatively small expense incurred in coming to the best possible understanding with these users. From the broader standpoint of serving the public by making the forests useful to the general prosperity and upbuilding of the country, such an attitude would be utterly wrong.

(3) Members of the Forest Service also attend and address meetings to promote education of the general public concerning forestry, in accordance with the duty laid by law upon the Department to diffuse the useful information which it gathers.

These educational addresses are demanded from the Forest Service in far greater numbers than it is possible for the Service to supply. Requests for them come from associations of lumbermen and other trade associations directly interested in the supply of forest products, chambers of commerce, boards of trade, commercial clubs, farmers' clubs, colleges, schools, professional bodies, and a great variety of public associations and assemblages. Most of the persons who make these addresses do so incidentally to the performance of other duties.

In certain cases the opportunity of instruction offered and the inability of the administrative force to meet it has justified the assignment for a longer or shorter time of some person specially qualified to take up this work. As nearly as can be stated at the present time the total number of invitations to address such meetings which were accepted during the past year was about 500. A more exact statement must await the completion of the work now under way to prepare all the information called for by the Senate resolution.

Educational addresses have always been one of the important forms of activity not merely of the Forest Service but of the entire Department. Along with the publications of the Department, they have served the primary purpose for which the Department was created—namely, to add to the general well-being through the spread of the best knowledge obtainable as to how to make our land most productive. In the Forest Service this educational work, through publications and addresses, goes hand in hand with practical demonstrations of the methods of forestry on the ground. Previous to February 1, 1905, it formed the main part of the work of the Service. This work in its entirety has been approved by successive Congresses through annual appropriations for its support. It is most important because it constitutes the means by which the Department is able, in the interests of the entire country, to promote the practice of forestry among the private owners of forest lands, whose holdings comprise more than three-fourths of the forests of the country. While the appropriations for this work are altogether inadequate to meet the opportunity created by the public demand for information, I consider it of the utmost importance to spread the knowledge of forestry as widely as possible.

In a word, the work concerning which information is sought by the Senate resolution is, in my judgment, of great public value. Its purposes are to improve the administration of the national forests, to make them more useful to the men who depend on them, and to improve the methods which, as a nation, we apply to the forest, which is one of our most fundamental sources of economic strength.

Very respectfully,

JAMES WILSON, *Secretary.*

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 451.

TRANSFER TO BANK OF INDO-CHINA OF CERTAIN LOT OF LAND AT PEKING, CHINA.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A COMMUNICATION FROM THE SECRETARY OF STATE SUBMITTING A DRAFT OF A BILL PROVIDING FOR THE TRANSFER TO THE BANK OF INDO-CHINA OF A CERTAIN LOT OF LAND LOCATED AT PEKING, CHINA.

APRIL 24, 1908.—Read, referred to the Committee on Foreign Relations, and ordered to be printed with illustration.

To the Senate and House of Representatives:

I transmit herewith for the consideration of the Congress a communication from the Secretary of State submitting a draft of a bill providing for the transfer to the Bank of Indo-China of a certain lot of land located at Peking, China, and now the property of the United States, said transfer being in consideration of the transfer to the United States by the Bank of Indo-China of three lots of land located in the said city.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *April 24, 1908.*

The PRESIDENT:

I have the honor to inclose herewith, with the recommendation that it be submitted to the Congress of the United States for enactment, draft of a bill providing for the transfer to the Bank of Indo-China of a certain lot of land located at Peking, China, and now the property

of the United States, said transfer being in consideration of the transfer to the United States by the Bank of Indo-China of three lots of land, located in the said city.

A memorandum giving the reasons why the exchange is desired, and a plat showing the relative locations and dimensions of the several lots, are inclosed herewith.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, April 23, 1908.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, authorized to transfer to the Bank of Indo-China a certain lot of land situated at Peking, China, and now belonging to the United States, said lot being designated as XYZ on the plat on file in the Department of State entitled "Plat showing the property situated at Peking, China, to be exchanged between the United States and the Bank of Indo-China," and marked with file No. 3565/45–47; said lot XYZ being described by metes and bounds, as follows:

Starting from the point "o" of lot "C," thence north 81° 58′ west 54 feet to the point "p," the place of beginning in describing lot "XYZ;" thence south 4° 36′ west 72 feet to a point "r;" thence north 77° 56′ west 67 feet to the point "a;" thence north 12° 4′ east 10 feet to the point "t;" thence south 77° 56′ east 50 feet to the point "u;" thence north 12° 4′ east 7 feet to the point "v;" thence south 85° 24′ east 6 feet to the point "w;" thence north 4° 36′ east 54 feet to the point "y;" thence south 81° 58′ east 10 feet to the point "p."

The said lot to be transferred to the said Bank of Indo-China in exchange for certain lots of land situated at Peking, China, and now belonging to the said bank, said lots being designated as A, B, and C on the said plat and described by metes and bounds, as follows:

LOT A.

The starting point marked "a" on the plat is the intersection of the west side of the west wall of the house built and formerly owned by H. G. Squiers, and being situated upon the south line of Legation street, Peking, China, and the west side of the west wall being 128 feet 6 inches, more or less, east of the east side of the main entrance to the compound of the Banque de l'Indo Chine, and 191 feet 6 inches, more or less, west of the intersection of the north line of Canadal street with the south line of Legation street, with the south face of the present wall running east and west on the south line of Legation street, said wall being the boundary wall on the north side of the property of the Banque de l'Indo Chine.

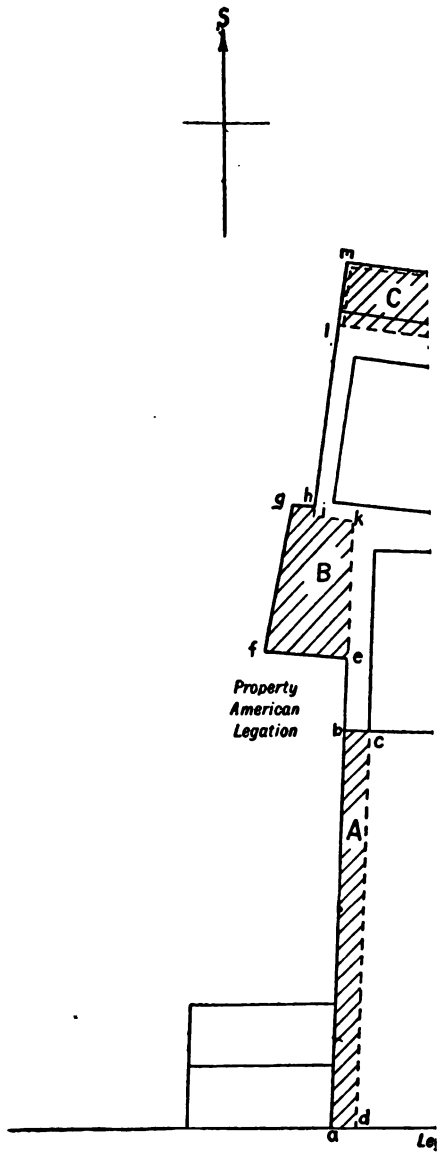
Beginning with the point "a," thence south 2° 52′ west 96 feet to the point "b;" thence west 1° 44′ north 4 feet 6 inches to the point "c," this being the northeast corner of the house now occupied by the comprador of the Banque de l'Indo Chine; thence north 2° 52′ east 96 feet to the point "d;" thence east to the starting point "a."

LOT B.

Starting from "a," thence south 2° 52′ west 114 feet to the point "e," which is the place of beginning in describing lot "B;" thence east 4° 36′ south 20 feet to the point "f;" thence south 11° 30′ west 36 feet to the point "g;" thence west 4° 36′ north 5 feet to the point "h;" thence north 11° 30′ east 2 feet to the point "j;" thence west 12° 38′ north 9 feet to the point "k;" thence north 2° 32′ east 32 feet to the point "e."

LOT C.

Starting from the point "h," thence south 8° 2′ west 44 feet to the point "l," which is the place of beginning in describing lot "C;" thence south 8° 2′ west 16 feet to the point "m;" thence west 8° 2′ north 20 feet to the point "n;" thence north 8° 2′ east 16 feet to the point "o;" thence east 8° 2′ south 20 feet to the point "l."



S. Doc. 451, 60–1

MEMORANDUM.

The Banque de l'Indo-Chine at Peking desires to exchange a small area of its land adjoining the legation premises for an area of about equal extent now the property of the United States. The idea of the exchange is simply to straighten boundary lines and for greater convenience.

In submitting the original proposition for exchange Mr. Rockhill said:

I think the exchange desirable and recommend it. It would straighten out the line of our property; no expense of any kind would be incurred; and no buildings of ours would be relinquished. The ground which we would give in exchange is now in some back yards, which would be of better shape by the exchange.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 453.

ESTIMATE FOR INCLUSION IN DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE SECRETARY OF STATE SUBMITTING AN ESTIMATE OF APPROPRIATION FOR INCLUSION IN THE DIPLOMATIC AND CONSULAR APPROPRIATION BILL NOW PENDING.

APRIL 25, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 24, 1908.

SIR: I have the honor to transmit herewith copy of a communication from the Secretary of State of the 21st instant, submitting an estimate of appropriation for inclusion in the diplomatic and consular appropriation bill now pending, as follows:

For the preparation of reports and material necessary to enable the Secretary of State to utilize and carry out the work partly performed by the Joint High Commission of eighteen hundred and ninety-eight, for the settlement of questions relating to Canada; and for the settlement of questions relating to Newfoundland, ten thousand dollars, or so much thereof as may be necessary, to become immediately available.

Respectfully,

JAS. B. REYNOLDS,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF STATE,
Washington, April 21, 1908.

SIR: I have the honor to request that you will submit to the President of the Senate, with a view to its insertion in the diplomatic and

consular appropriation bill to be reported to the Senate during the present session, the following item of appropriation:

For the preparation of reports and material necessary to enable the Secretary of State to utilize and carry out the work partly performed by the Joint High Commission of eighteen hundred and ninety-eight, for the settlement of questions relating to Canada and for the settlement of questions relating to Newfoundland, ten thousand dollars, or so much thereof as may be necessary, to become immediately available.

A like amount was for the same purpose appropriated by the diplomatic and consular act for the fiscal year ended June 30, 1907. This sum having been considered sufficient to carry on the work until July 1 next, no request for an appropriation on this account was made for the fiscal year ending June 30, 1908. The appropriation is now nearly exhausted. Much work in the direction indicated remains to be done, and it is important to the public interests and to the good relations between the two Governments that the work should continue to a conclusion.

I have the honor to be, sir, your obedient servant,

ELIHU ROOT

The SECRETARY OF THE TREASURY.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 455.

JOHN T. SHARP, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF JOHN T. SHARP, ADMINISTRATOR OF JOHN SHARP, DECEASED, AND OF GEORGE DICKSON, DECEASED, AGAINST THE UNITED STATES.

APRIL 30, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 29, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12907. John T. Sharp, administrator of the estate of John Sharp, deceased, and of George Dickson, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claims in the above-entitled cause is for property alleged to have been taken by the military forces of the United States for their use during the war for the suppression of the rebellion.

This claim was first referred to the court by the Committee on War Claims of the House of Representatives February 27, 1892, under the act of March 3, 1883. On a preliminary hearing the claimants' decedents were found loyal to the Government of the United States throughout the late civil war.

Thereafter, on March 2, 1907, the United States Senate, by resolution referred to the court, under the act of March 3, 1887, known as the Tucker Act, a bill in the following words:

"[S. 5464, Fifty-ninth Congress, first session.]

"A BILL For the relief of John Sharp and George Dickson.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to John Sharp eight hundred and thirteen dollars and fifty cents, or to his legal

representatives, and to George Dickson ninety-nine dollars, or to his legal representatives, the same in both cases to be taken and receipted in full satisfaction and discharge of said claims against the United States."

The claimant appeared and filed his petition in this court, in which he makes substantially the following allegations:

That the claim was presented to the Quartermaster-General under the act of July 4, 1864; subsequently he petitioned Congress, and the Committee on War Claims referred the claim to this court under the Bowman Act; the claimants' decedents under said act were both found loyal; the claim was again referred under the Tucker Act by resolution of the United States Senate; that the military forces took from a farm in Fayette County, W. Va., the following property belonging to claimants' decedents: 1 gray mare, $150; 1 mule, $150; 150 bushels of Marlin apples, $112.50; 30 bushels of corn, $30; 2,000 pounds of hay, $20; 2 yoke of steers and 1 steer, $200; 1 steer, $64; 5 hogs, $60; 50 pounds of bacon, $27; total, $813.50.

The property which belonged to the estate of George Dickson is as follows: 400 panels of fence, $84; blacksmith tools, $15; making a total of $99.

The case was brought to a hearing on its merits on April 16, 1908.

Raleigh Sherman, esq., appeared for the claimant, and the Attorney-General, by F. W. Collins, esq., his assistant, appeared for the protection and defense of the interests of the United States.

On motion of claimant's attorney, Congressional case No. 8631 and the present case were consolidated.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants except the report of the Treasury Department and the War Department, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. John Sharp, deceased, and George Dickson, deceased, were loyal to the Government of the United States throughout the late civil war.

II. There was taken by the military forces of the United States, by proper authority, for the use of the Army, from the claimant's decedent, John Sharp, in Fayette County, W. Va., property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of three hundred and forty dollars ($340), no part of which appears to have been paid.

III. There was taken by the military forces of the United States, by proper authority, for the use of the Army, from the claimant's decedent, George Dickson, in Fayette County, W. Va., property of the kind and character described in the petition, which at the time and place of taking was reasonably worth the sum of ninety-nine dollars ($99), no part of which appears to have been paid.

IV. The claim herein was presented to the Quartermaster-General, who disallowed the same December 9, 1878. Thereafter the claim was presented to Congress and was, on February 27, 1892, referred to the court under the provisions of the act of March 3, 1883, known as the Bowman Act, by the Committee on War Claims of the House of Representatives. Later, on March 2, 1907, the claim was referred to the court by resolution of the United States Senate under the provisions of the act of March 3, 1887, known as the Tucker Act, as hereinbefore set forth in the statement of the case, whereupon the two cases were consolidated.

BY THE COURT.

Filed April 20, 1908.
A true copy.
Test this 29th day or April, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 457.

FRANCHISES GRANTED BY EXECUTIVE COUNCIL OF PORTO RICO TO PUERTO RICO SUGAR COMPANY, COMPAÑÍA AZUCARERA CENTRAL MACHETE, AND MESSRS. MULLENHOFF AND KORBER.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

COPIES OF FRANCHISES GRANTED BY THE EXECUTIVE COUNCIL OF PORTO RICO TO THE PUERTO RICO SUGAR COMPANY, THE COMPAÑÍA AZUCARERA CENTRAL MACHETE, AND TO MESSRS. MULLENHOFF AND KORBER.

MAY 1, 1908.—Read; referred to the Committee on Pacific Islands and Porto Rico and ordered to be printed.

To the Senate and House of Representatives:

In accordance with section 32 of an act of Congress entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, I transmit herewith certified copies of franchises granted by the executive council of Porto Rico to the Puerto Rico Sugar Company, the Compañía Azucarera Central Machete, and to Messrs. Mullenhoff and Korber.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *May 1, 1908.*

AN ORDINANCE granting to the Puerto Rico Sugar Company, its successors and assigns, the right to take and use thirty-five (35) liters of water per second for industrial purposes from the brook "Anton Ruiz" in the municipal district of Humacao.

Be it Ordained and Enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to the Puerto Rico Sugar Company, its successors and assigns, to take and use thirty-five (35) liters of water per second from the brook "Anton Ruiz" for industrial purposes in connection with its sugar central "Pasto Viejo" in the municipal district of Humacao. The water so taken, less the unavoidable loss, shall be returned to the stream uncontaminated after it has served the purpose for which it was taken.

SEC. 2. Before this franchise shall become effective the grantee shall obtain the approval of the Commissioner of the Interior of all plans and specifications prepared and submitted by such grantee, showing the method and manner in which the said water shall be taken from the stream, and conveyed to the Central where it is to be used and returned therefrom to said stream.

SEC. 3. This concession is granted subject to the prior rights of all other persons and especially subject to any general plan or system of irrigation or any other general plan for the utilization of the waters of streams of the Island that may hereafter be established by law, and also subject to all the conditions and provisions of Section 3 of the Joint Resolution of Congress entitled "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the Act approved April twelfth, nineteen hundred, entitled 'An Act temporarily to provide revenues and a Civil Government for Porto Rico, and for other purposes,'" approved May 1st, 1900.

SEC. 4. As compensation for the use of said water the grantee shall pay yearly in advance to the Treasurer of Porto Rico for the benefit of the People of Porto Rico the sum of twenty-five (25) dollars, the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SEC. 5. Should the grantee fail to make such annual payment at any time, or should he cease to use the water for a year and a day, or divert said water to any purpose other than as herein provided, then this concession shall cease to have any force and effect. The Commissioner of the Interior or his agents shall have the right at any time to inspect the work herein authorized.

Done in open session of the Executive Council this 26 day of March, A. D. 1908.

(Sgd) W. F. WILLOUGHBY
President of the Executive Council.

Approved this 27th day of March A. D. 1908.

(Sgd) RÉGIS H. POST
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, secretary of Porto Rico, do hereby certify that the foregoing three printed pages are a true copy of an ordinance entitled "An ordinance granting to the Puerto Rico Sugar Company, its successors and assigns, the right to take and use thirty-five (35) liters of water per second for industrial purposes from the brook 'Anton Ruiz' in the municipal district of Humacao," as the said ordinance appears upon the official record in my custody of the proceedings of the executive council of Porto Rico at a meeting held on the 26th day of March, A. D. 1908. I further certify that the said ordinance was duly approved by the governor of Porto Rico on the 27th day of March, A. D. 1908, as appears by the official records in this office.

In witness whereof I have hereunto set my hand and the great seal of Porto Rico, at the capital, on this 27th day of March, in the year of

our Lord 1908, and of the independence of the United States the one hundred and thirty-second.

W. F. WILLOUGHBY,
Secretary of Porto Rico.

AN ORDINANCE granting to the Compañía Azucarera Central Machete, its successors and assigns, the right to take and use ten (10) liters of water per second for industrial purposes from the creek "Branderis" in the municipal district of Guayama.

Be it Ordained and Enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to the Compañía Azucarera Central Machete, its successors and assigns, to take and use ten (10) liters of water per second from the creek "Branderis" for industrial purposes in connection with its Central in the municipal district of Guayama. The water so taken, less the unavoidable loss, shall be returned to the stream uncontaminated after it has served the purpose for which it was taken.

SEC. 2. Before this franchise shall become effective the grantee shall obtain the approval of the Commissioner of the Interior of all plans and specifications prepared and submitted by such grantee, showing the method and manner in which the said water shall be taken from the stream and conveyed to the Central where it is to be used and returned therefrom to said stream.

SEC. 3. This concession is granted subject to the prior rights of all other persons and especially subject to any general plan or system of irrigation or any other general plan for the utilization of the waters of streams of the Island that may hereafter be established by law, and also subject to all the conditions and provisions of Section 3 of the Joint Resolution of Congress entitled "Joint Resolution to provide for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the Act approved April twelfth, nineteen hundred, entitled 'An Act temporarily to provide revenues and a Civil Government for Porto Rico, and for other purposes,'" approved May 1st, 1900.

SEC. 4. As compensation for the use of said water the grantee shall pay yearly in advance to the Treasurer of Porto Rico for the benefit of the People of Porto Rico the sum of twenty-five (25) dollars, the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SEC. 5. Should the grantee fail to make such annual payment at any time, or should he cease to use the water for a year and a day, or divert said water to any purpose other than as herein provided, then this concession shall cease to have any force and effect. The Commissioner of the Interior or his agents shall have the right at any time to inspect the work herein authorized.

Done in open session of the Executive Council this 26 day of March, A. D. 1908.

(Sgd) W. F. WILLOUGHBY,
President of the Executive Council.

Approved this 27th day of March A. D. 1908.

(Sgd.) RÉGIS H. POST,
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, secretary of Porto Rico, do hereby certify that the foregoing three printed pages are a true copy of an ordinance entitled "An Ordinance granting to the Compañía Azucarera Central Machete, its successors and assigns, the right to take and use ten (10) liters of water per second for industrial purposes from the creek 'Branderis' in the municipal district of Guayama" as the said ordinance appears upon the official record in my custody of the proceedings of the executive council of Porto Rico at a meeting held on the 26th day of March, A. D. 1908. I further certify that the said ordinance was duly approved by the governor of Porto Rico on the 27th day of March, A. D. 1908, as appears by the official records in this office.

In witness whereof, I have hereunto set my hand and the great seal of Porto Rico, at the capital, on this 27th day of March, in the year of our Lord 1908, and of the independence of the United States the one hundred and thirty-second.

W. F. WILLOUGHBY,
Secretary of Porto Rico.

AN ORDINANCE granting to Messrs. Mullenhoff and Korber the right to take and use six hundred and twenty-five (625) gallons of water per minute from the river "Ingenio"; three hundred and thirty-three (333) gallons of water per minute from the brook "Teja"; two hundred and eighty-seven (287) gallons of water per minute from the brook "Aguacate" or "Pilar"; and one hundred and six (106) gallons of water per minute from the brook "Cortadera", for the irrigation of twelve hundred (1,200) cuerdas of land belonging to the estate "Ingenio", barrio of Aguacate, municipal district of Yabucoa.

Be it Ordained and Enacted by the Executive Council of Porto Rico:

SECTION 1. That the right and privilege are hereby granted to Messrs. Mullenhoff and Korber, their successors and assigns, to take and use six hundred and twenty-five (625) gallons of water per minute from the river "Ingenio"; three hundred and thirty-three (333) gallons of water per minute from the brook "Teja"; two hundred and eighty-seven (287) gallons of water per minute from the brook "Aguacate" or "Pilar"; and one hundred and six (106) gallons of water per minute from the brook "Cortadera", for the purpose of irrigating twelve hundred (1,200) cuerdas of land belonging to the estate "Ingenio" in the barrio of Aguacate, municipal district of Yabucoa.

SEC. 2. Before this franchise shall become effective the grantee shall obtain the approval of the Commissioner of the Interior of the plan showing the points at and the method and manner in which said water shall be taken from the streams; and the Commissioner of the Interior, or his agents, shall have the right at any time to inspect the work herein authorized.

SEC. 3. This concession is granted subject to the prior rights of all other persons, and especially subject to any general plan or system of irrigation or any other general plan for the utilization of waters of streams of the Island that may hereafter be established by law, and also subject to all the conditions and provisions of Section 3 of the Joint Resolution of Congress entitled "Joint Resolution to provide

for the administration of civil affairs in Porto Rico pending the appointment and qualification of the civil officers provided for in the Act approved April twelfth, nineteen hundred, entitled 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes,'" approved May 1, 1900.

SEC. 4. The Executive Council hereby expressly reserves to itself the right to fix a minimum flow of water that grantees shall allow to flow down the streams at any time that it becomes satisfied that undue hardship is being imposed upon property owners or others owning property or living below the points at which the grantees in pursuance of this ordinance may take water from the streams, by the supply of water passing down the stream being shut off on account of water being taken in pursuance of this franchise.

SEC. 5. As compensation for the use of the water herein granted the grantees shall pay yearly in advance to the Treasurer of Porto Rico for the use of the People of Porto Rico the sum of thirty cents per cuerda of the land above described, the first annual payment to be made within fifteen days after the approval of this ordinance by the Governor of Porto Rico.

SEC. 6. Should the grantees at any time fail to make said annual payment, or cease to use the water for one year and one day, or should they use said water for any purpose other than as herein authorized, then this concession shall ipso facto become forfeited and of no further force and effect.

Done in open session of the Executive Council this 26 day of March A. D. 1908.

(Sgd) W. F. WILLOUGHBY,
President of the Executive Council.

Approved this 27th day of March A. D. 1908.

(Sgd) RÉGIS H. POST,
Governor of Porto Rico.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, secretary of Porto Rico, do hereby certify that the foregoing three printed pages are a true copy of an ordinance entitled "An ordinance granting to Messrs. Mullenhoff and Korber the right to take and use six hundred and twenty-five (625) gallons of water per minute from the river 'Ingenio'; three hundred and thirty-three (333) gallons of water per minute from the brook 'Teja;' two hundred and eighty-seven (287) gallons of water per minute from the brook 'Auguacate' or 'Pilar;' and one hundred and six (106) gallons of water per minute from the brook 'Cortadera,' for the irrigation of twelve hundred (1,200) cuerdas of land belonging to the estate 'Ingenio,' barrio of Aguacate, municipal district of Yabucoa," as the said ordinance appears upon the official record in my custody of the proceedings of the executive council of Porto Rico at a meeting held on the 26th day of March, A. D. 1908. I further certify that the said ordinance was duly approved by the governor of Porto Rico on the

27th day of March, A. D. 1908, as appears by the official records in this office.

In witness whereof, I have hereunto set my hand and the great seal of Porto Rico, at the capital, on this 27th day of March, in the year of our Lord 1908, and of the independence of the United States the one hundred and thirty-second.

W. F. WILLOUGHBY,
Secretary of Porto Rico.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 459.

OFFICE QUARTERS FOR THIRTEENTH CENSUS.

Mr. CARTER presented the following

REPORT OF THE DIRECTOR OF THE CENSUS TO THE SECRETARY OF COMMERCE AND LABOR. TO ACCOMPANY S. 6955.

MAY 4, 1908.—Referred to the Committee on the Census and ordered to be printed.

[Report of the Director of the Census to the Secretary of Commerce and Labor, November 1, 1907.

OFFICE QUARTERS FOR THE THIRTEENTH CENSUS.

The matter of adequate accommodations for the Thirteenth Census should also be brought to the immediate attention of Congress. Although the building now rented and occupied by the Census Office was built for its especial use and in conformity with its own plans, it was wholly inadequate for the requirements. It can accommodate but 2,200 clerks at the utmost, and 3,554 were employed at the height of the Twelfth Census work. The maximum number required to compile the Thirteenth Census will be at least 4,000. It is a great handicap in work of this character to be obliged to scatter the clerical force throughout the city in rented buildings, as was the case in 1900–1902. It increases cost, reduces efficiency, and consumes time.

It is evident that a building for the Department of Commerce and Labor, should it be immediately authorized by Congress, can not be ready for occupancy in time for the Thirteenth Census.

It therefore seems wise to seriously consider the possibilities of adapting the present Census quarters to the needs of the Thirteenth Census. The available land contiguous to this building is ample for the purpose, and it would be a wise business transaction for the Government to purchase the plot of land bounded by First and Second streets east and west and B street and the alley north and south. Besides the Census building, this block contains the large four-story building on First street, formerly occupied by the Business High School, and the vacant lot in the rear of this building, facing Second street, which is owned by the Emery estate, which owns the lot and building occupied by the Census Office.

The building formerly occupied by the Business High School, after suitable repairs, will afford accomodations for 1,000 clerks. Upon the lot west of it, owned by the Emery estate, another building can be erected, six or seven stories in height, ample in size to accommodate all the additional clerks required to compile the Thirteenth Census. An ornate and expensive building is not necessary.

The property above described is one that will ultimately be purchased by the Government as necessary to complete the approaches to the Capitol. It is probable that such a purchase will ultimately include the entire block bounded by B and C streets and by First and Second streets. It can never hereafter be purchased for so reasonable a sum as at present. If a part of the block is to be purchased, to meet the present requirements of the Census, the whole of the block might as well be secured at the same time, as a part of the same transaction, with a view to meeting the future requirements of the Census.

The property upon which the present Census building stands, including the additional lot of 11,000 square feet owned by the Emery estate, covers 106,900 square feet of land, and can be purchased from the estate for the sum of $354,126, which is the original purchase-price option given the Government at the time when the contract for the construction of the building was made between the former Director of the Census and the late M. G. Emery. This option expires July 1, 1908. In the event of condemnation proceedings, judging by experience in connection with the purchase of the land for the two new Congressional buildings, it is believed that this price is less than the Government would be called upon to pay. The high school building and site (11,000 square feet) can be purchased for $60,000, making the total cost of the two buildings and of 117,000 square feet of land, $414,126.

The Government has already paid out for rental of the present Census building the sum of $190,000, or more than one-half the amount for which the entire property above described can now be purchased. It has also paid out, for census purposes, for extra quarters during the Twelfth Census, and for storage room since, the sum of $12,000. There will be necessary, to supply additional accommodations for the Thirteenth Census, a further expenditure for rent of at least $25,000. It is evident, therefore, that by purchasing this property now the Government will become the owner of it for a price no greater, if as great, as it will have paid out in rental for census purposes by the time the Fourteenth Census is undertaken.

The suggested purchase is therefore a good business proposition especially as the price asked for the property under consideration is less per square foot than the prevailing price per square foot for any property equally desirable and available in any other part of the city.

If the necessary building above referred to is to be completed prior to the beginning of the Thirteenth Census, the legislation should be enacted at the coming session of Congress. It is estimated that a plain, substantial fireproof building of brick, seven stories in height, with ample accommodations for 2,000 clerks, can be constructed for $300,000. The total appropriation necessary to carry into effect the plans herein outlined would therefore be $714,000.

Respectfully,

S. N. D. NORTH, *Director.*

Hon. OSCAR S. STRAUS,
Secretary of Commerce and Labor.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 462.

INTERNATIONAL PRISON CONGRESS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A REPORT BY THE ACTING SECRETARY OF STATE COVERING PAPERS PRESENTED BY MR. SAMUEL J. BARROWS, COMMISSIONER FOR THE UNITED STATES ON THE INTERNATIONAL PRISON COMMISSION, SETTING FORTH THE ORIGIN, HISTORY, SCOPE, AND OBJECT OF THE INTERNATIONAL PRISON CONGRESS, AND THE PROGRAMME OF QUESTIONS TO BE DISCUSSED AT THE NEXT MEETING OF THE CONGRESS, TO BE HELD AT WASHINGTON IN 1910.

MAY 5, 1908.—Read; referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate and House of Representatives

I transmit, for the information of Congress, a report by the Acting Secretary of State covering papers presented by Mr. Samuel J. Barrows, Commissioner for the United States on the International Prison Commission, setting forth the origin, history, scope, and object of the International Prison Congress, and the programme of questions to be discussed at the next meeting of the Congress, which, in pursuance of the invitation of the Congress of the United States, will take place at Washington in 1910.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *May 5, 1908.*

The PRESIDENT:

The undersigned, Acting Secretary of State, has the honor to lay before the President, with a view to the transmission of the papers to Congress, a copy of a letter from Mr. Samuel J. Barrows, Commissioner for the United States on the International Prison Commission, presenting a brief report setting forth the origin, history, scope, and object of the International Prison Congress, and the programme

of questions adopted for discussion at the next Congress, which, in pursuance of the invitation extended by the Congress of the United States, is to meet at Washington in 1910.

Respectfully submitted.

ROBERT BACON.

DEPARTMENT OF STATE,
Washington, May 4, 1908.

INTERNATIONAL PRISON COMMISSION,
New York City, May 3, 1908.

SIR: In view of the fact that the Congress of the United States extended, through the President, an invitation to the International Prison Congress to meet in Washington in 1910, and that this invitation has been accepted, it is important that due publicity should be given to the matter in the United States. I therefore have the honor to present herewith a brief report setting forth the origin, history, scope, and object of the International Prison Congress, which is followed by the programme of questions adopted for discussion at the next congress.

I respectfully request that this report may be presented to Congress, with a view to its publication.

I have the honor to be, sir, your obedient servant,

SAMUEL J. BARROWS,
Commissioner for the United States on the International Prison Commission.

Hon. ELIHU ROOT,
Secretary of State, Washington, D. C.

THE INTERNATIONAL PRISON CONGRESS.

The Government of the United States took the initiative in the formation of the International Prison Congress, which was organized thirty-seven years ago under authority of a joint resolution of Congress passed March 7, 1871. Dr. E. C. Wines was appointed a commissioner by President Grant to secure the cooperation of European governments in the holding of a great international congress for the discussion of all matters relating to the prevention and treatment of crime, the improvement of criminal law, and of prison administration.

In the execution of this commission Doctor Wines visited Europe in 1871. He opened personal communication with the governments of Great Britain, France, Belgium, the Netherlands, the North German Empire, Austria, Italy, and Switzerland. Everywhere his proposition was received with favor by the governments addressed and by private citizens interested in penology.

As a result of the indefatigable efforts of the commissioners, supported by the authority and prestige of our Government, the first meeting of the International Prison Congress was held at London in 1872.

In the proceedings of that congress the part taken by the United States and its commissioner in the calling together and organization of that congress are generously recognized as they have been at nearly every meeting of the congress since held.

As a result of the meeting in London the congress was organized on a permanent basis. Provision was made for the holding of international congresses once in five years, but to give continuity to the work of investigation, the diffusion of information, and to secure a closer intercourse between the nations, the International Prison Commission, composed of one official representative of each of the adhering countries, was organized, and serves as the executive committee and permanent council of the congress.

SCOPE OF THE WORK.

The name "Prison Congress" does not give a clear idea of its scope and work. It is an international organization against crime, which is no longer a local question and can not be dealt with simply by local machinery. What are the sources of crime? How can it be prevented? What measures can different nations take to promote their own security? How shall we deal with the offender so as to correct and reform him? What protection shall be thrown around children and minors? are important questions in modern civilization. It will thus be seen that the word "prison" only partly suggests the great aim of this congress, which is to promote social order, reduce vice, improve environment, strengthen preventive agencies against crime, and promote the rehabilitation of the offender.

ORGANIZATION.

The congress is divided into four sections:

Section I relates to criminal law. In this section are some of the most eminent jurists in Europe. The discussions here are not merely academic. They relate to the fundamental principles of penal law and their practical application. They include the organization and administration of courts, the structure of penal codes, questions of criminal procedure, the classification of offenses, and application of penalties. Questions of extradition, the relation of nations to each other in the suppression of crime naturally fall under this section.

Section II relates to prison administration. It is naturally made up of those who have had experience as directors, superintendents, or wardens of prisons or correctional institutions. Everything relating to prison structure, hygiene, prison industries, the classification, organization, and education of offenders to dietaries, medical treatment, the prevention and cure of tuberculosis, and other prison diseases, the study of the criminal, and many other practical questions come under this section.

Section III relates to preventive means. This covers a wide field of sociological inquiry as to the causes and the prevention of crime.

Section IV relates to children and minors. Child saving is one of the most important and absorbing questions of our time. Neglected childhood, whether from neglected homes, neglected schools, or neglected factories, means an increase of crime. This section has given

a new impetus to the subject of children's courts and the legal treatment of children accused of crime. Though the congress has done much to indicate better methods of prison discipline and improvement in criminal codes, it is destined to have a still greater influence in the reduction of crime through the serious study and attention which it is now giving to all preventive influences.

THE WORK OF THE INTERNATIONAL PRISON COMMISSION.

The commission, which, as already said, is the executive arm of the congress, meets every other year. It is composed of one member of each of the nations that have formally joined the commission and annually subscribe to its funds. It is the work of the commission to prepare and secure reports and conduct investigations in the different countries on every aspect of the subject of crime and its treatment. The proceedings of the commission and other reports are published from time to time and circulated among the various nations.

In addition to the reports published in French relating to the prison systems of other countries, the following reports have been prepared and edited for the International Prison Commission by the commissioners for the United States, with the cooperation of associates in different States:

Report of the delegates of the United States to the Fifth International Prison Congress, held at Paris, France, in July, 1895.

The criminal insane in the United States and in foreign countries. (55th Cong., 2d sess., Senate Doc. No. 273, 1898.)

The indeterminate sentence and parole law. (55th Cong., 3d sess., Senate Doc. No. 159.)

Penological questions. (55th Cong., 3d sess., Senate Doc. No. 158.)

New legislation concerning crimes, misdemeanors, and penalties. (55th Cong., 1st sess., 1907.)

The reformatory system in the United States. (56th Cong., 1st sess., House Doc. No. 459.)

Prison systems of the United States. (56th Cong., 1st sess., House Doc. 566.)

The cost of crime. (56th Cong., 2d sess., House Doc. No. 491.)

Growth of the criminal law of the United States. (57th Cong., 1st sess., House Doc. No. 362.)

The Sixth International Prison Congress, held at Brussels, Belgium, 1900. (57th Cong., 2d sess., House Doc. No. 374.)

Penal codes of France, Germany, Belgium, and Japan. (56th Cong., 2d sess., House Doc. No. 489.)

Modern prison systems. (57th Cong., 2d sess., House Doc. No. 452.)

Programme of questions for the Seventh International Prison Congress to be held at Budapest, Hungary, 1905. (58th Cong., 2d sess., H. Doc. No. 702.)

Children's courts in the United States; their origin, development, and results. (58th Cong., 2d sess., H. Doc. No. 701.)

Tuberculosis in penal institutions. (58th Cong., 3d sess., H. Doc. No. 192.)

The Seventh International Prison Congress, held at Budapest, Hungary, 1905. Washington, Government Printing Office, 1907.

PREVIOUS CONGRESSES.

At intervals of five years congresses have been held at London, Stockholm, Rome, St. Petersburg, Paris, Brussels, and Budapest. The congress has always been officially invited by the government of the country in which it was held, and the sessions have always been held at the national capital, but unofficial national and local organizations, distinguished specialists, and many private philanthropists have contributed greatly to the success of the conferences. While the congress rests on a basis of government support, it must depend largely on the cooperation of private societies and individuals interested in various aspects of modern penology.

THE NEXT CONGRESS AT WASHINGTON IN 1910.

Though the United States took the lead in organizing and establishing the International Prison Congress, and its first president was the American commissioner, Dr. E. C. Wines, it has thus far held no meeting in the United States. By a joint resolution of the Senate and House of Representatives of the United States, approved March 3, 1905, the President was authorized and requested to extend to the International Prison Congress an invitation to hold in the United States its eighth congress. This invitation, extended by the President of the United States, was accepted with enthusiasm and unanimity, and the congress will meet accordingly in Washington, D. C., in September, 1910.

COOPERATION OF SOUTH AMERICAN STATES.

With the exception of Cuba and Mexico the South American States have not heretofore been represented at the congresses, and Cuba alone has a member on the International Prison Commission. It is earnestly desired that the South American States should be fully represented at the Washington meeting. While the continents of North and South America are now being brought into a closer commercial and material union, shall not the eminent jurists, philanthropists, and sociologists of both continents come together in fraternal conference with the men and women of the Old World, banded together in this congress to raise the level of our modern civilization?

FORTY YEARS OF PROGRESS.

In the last forty years the International Prison Congress has had a marked influence on modern civilization. Wiser laws, better institutions, improved methods for social protection, new agencies for the prevention of crime and for the study, treatment, and reformation of the prisoner are directly traceable to its influence. It has served as an international clearing house for the collection and diffusion of information. National and local societies have grown from its loins. Our age is marked by a high standard of justice and humanity. Inspired by this spirit, the International Congress has helped to win for it new victories. The meeting at Washington will give an opportunity to show what has been accomplished in forty

years in the domain of criminal law and practical and applied penology.

EDUCATIONAL AND PHILANTHROPIC SOCIETIES.

As this congress deals not only with the punishment of crime, but with the great questions of prevention and child saving, all societies whose work lies in any part of this field are urged to send representatives. Sociology is now an important department in most American colleges, and it is hoped that professors and the teaching force of our universities will be largely represented.

PROGRAMME OF QUESTIONS FOR THE EIGHTH INTERNATIONAL PRISON CONGRESS TO BE HELD AT WASHINGTON, U. S. A., 1910.

[Adopted by the International Prison Commission.]

PROGRAMME OF THE NEXT CONGRESS.

It is the practice of the International Prison Commission to adopt, more than a year in advance, the programme of questions for the succeeding International Prison Congress, and to submit the same, with explanatory notes, to members of the congress and other experts in various countries, with the view of securing a sufficient number of authoritative reports or monographs on each question.

These reports are not read at the congress, but a digest and analysis is made of them all by a special reporter on each question, and they furnish the basis of discussion.

The notes subjoined to these questions have been prepared by the Commission to set forth more distinctly the special problems involved and the data desired.

I have been instructed by the Commission to cordially invite the cooperation of writers and workers in the United States in the large field covered by the congress. Papers should be as concise as possible, consistent with an adequate presentation of facts and opinions, and should be submitted to the commissioner of the United States as early as possible that they may be translated into French and be published and distributed some months in advance of the meeting of the congress.

Papers, communications, and letters of inquiry may be addressed to Samuel J. Barrows, commissioner for the United States, 135 East Fifteenth street, New York City.

FIRST SECTION.—*Penal legislation.*

"Question 1. Assuming that a rational relation exists between the principle of the indeterminate sentence and the fundamental principles of criminal jurisprudence—

"(*a*) What class of delinquents should be submitted to, and what class excluded from its application?

"(*b*) How may a sentence of this kind without minimum or maximum limits be applied without danger to individual liberty?

"If it is not admitted that there is a rational relation between the principle of the indeterminate sentence and the fundamental principles of criminal jurisprudence, is there ground for adding to the definite sentence with respect to a particular individual a restriction in the form of a supplemental penalty; and if so, in what cases, and how is it to be applied?"

While jurists are still discussing the philosophy of the indefinite sentence and its relation to criminal jurisprudence this form of sentence has already been adopted in seven States of the United States, under varying conditions. In some cases the maximum limit for which a prisoner may be held is the maximum limit for the offense prescribed by the code. In other cases the court may fix a minimum or maximum limit within the time limits prescribed by the code. There are those who urge the adoption of a purely indefinite sentence, without maximum or minimum limit, either in the code or in the discretion of the judge, but leaving the conditional liberation of the prisoner to be determined by a

board of parole or a court of release. While the ordinary safeguards of liberty would exist as to the commitment of the prisoner, what conditions in general should govern his release, and how should the court of release be formed and with what powers invested? Will it not be possible by modification of our judicial system, conferring upon the court of release the power of conditional release now held by the court of commitment, to gain the advantages of an absolute indeterminate sentence?

The final paragraph of the question would naturally be confined in its application to countries in which the indeterminate sentence does not exist. In addition to the principal sentence, which may be for a definite term of imprisonment, is it desirable in certain cases to fix a supplementary penalty? Forms of supplementary penalties already existing in some countries are a certain period of police supervision, the deprivation of civil rights, the payment of a fine. The question raised is, whether such secondary penalties are desirable and when and how they should be applied.

"Question 2. How and in what manner may effect be given to penal sentences pronounced by foreign tribunals, especially with reference to habitual criminality and legal incapacity?"

According to the laws of the United States an immigrant who has been convicted of felony in a foreign country may be deported.

Certain States of the United States have habitual-criminal laws providing that a person who has been convicted a certain number of times for felony shall be imprisoned for twenty-five years or for life. How may it be ascertained that there have been previous convictions in other States and countries, and how may this knowledge be used in dealing with such cases?

"Question 3. To resist the tendency of criminals to band themselves together is it not desirable to make participation in criminal acts or agreements a distinct crime, or at least to make all such complicity a legal aggravation?"

The scope of the question is evident, but it may well be asked whether such modifications of criminal codes have any practical deterrent value. The criminal class as such seldom consult them and are scarcely deterred by subtle distinctions; but, on the other hand, is it not desirable that our code should be simplified and strengthened so as to furnish better protection to society in dealing with offenders? The minute distinctions made in our codes as to the degree of participation in crime are technical and arbitrary and enable certain criminals who organize or direct the operations of other criminals to escape punishment.

"Question 4. What part does the death penalty play in the penal system of the different countries?"

The object of this question is to secure a body of information from every country in the world in which there is an organized administration of justice concerning the existence or nonexistence of the death penalty. In many countries the death penalty has been abolished for a long period of years; it is now possible to ascertain what has been the effect of such abolition as to the commission of crimes for which the death penalty was imposed. Thus, in England, more than a century ago, a large number of offenses, said by some writers to be at least 200 in number, were included in the list of capital crimes. Until 1894 under the Federal laws of the United States 25 offenses were punishable by death under the military code, 22 under the naval code, and under the criminal code there were not less than 17. Has the number of such offenses decreased or increased in proportion to the population since the abolition of the death penalty? The answers to this question will furnish material for deduction as to the deterrent value of the death penalty.

In countries retaining the death penalty in the criminal code it is important to ascertain whether it is actually applied and to what extent.

In certain States and countries changes have been made in the manner of inflicting it. Private executions have been substituted for public ones, and electricity has been substituted for hanging or for the guillotine.

To obtain uniform facts and statistics the following schedule of questions has been prepared:

FACTS.

1. Did the death penalty exist in your State in 1905? { Yes. / No.

2. Enumerate the offenses for which inflicted.

3. What, if any, other offenses were thus punished in 1850?

(If the information is not obtainable from this date, then give it for any later date for which it is obtainable.)

4. Give dates of abolition of the death penalty for the offenses (if any) given in reply to question 3.

5. What, if any, offenses have been added since 1850 to the list punishable by death?

6. What punishment has been substituted for the death penalty in the case of each offense included in answer to question 3?

7. In the case of each offense for which the death penalty has been inflicted at any time since 1850, give table, by years, of number of trials and of convictions in this form:

Year.	Population.	Number of trials for—	Number of convictions.
1850			
1851			
1852, and so on each year to 1905, inclusive			

8. Are executions public or limited to a number of legal witnesses?

9. If not public, when were public executions abolished?

10. How is the death penalty applied and under what regulations?

11. If the death penalty is still authorized by law in your State, to what extent is its application suspended?

(*a*) In how many cases has the sentence been commuted to life imprisonment (a) by the jury; (b) by executive authority?

(*b*) In how many cases of indictment for murder was conviction secured on some lower degree of the offense, such as murder in the second degree or manslaughter?

(*c*) In how many cases of murder did the perpetrator commit suicide?

OPINIONS.

12. What do you believe to be the effects of the changes, if any, in relation to the application or restriction of the death penalty?

13. What is the public sentiment as to the effect of these changes?

14. If public executions have been abolished, what do you believe to have been the effect on public morals and on criminality?

15. Any other remarks or suggestions.

SECOND SECTION.—*Prison administration.*

"Question 1. What are the essential principles of a modern reformatory system, and upon what rational methods should it be based? Should its application be limited by age, or other classification? If so, under what limitations?

"Must we not admit the necessity of special treatment for youthful criminals and even recidivists from 16 to 21 or 23 years, recognizing the plasticity of that age and the possibility of curing by special methods physical, moral, and intellectual, the perverted instincts of young offenders? In that case is it not desirable to give to the courts the power of imposing a special penalty:

"(*a*) Sufficiently long to permit the full application of all means of reformation?

"(*b*) Permitting the free application of conditional liberation?"

The reformation of the prisoner is now universally accepted as one of the principal ends of prison administration. The main question is, How is it to be secured? With this end in view different prison systems have been developed. Under one system this end is supposed to be best promoted by completely isolating the offender from his fellow-prisoners with a view to individual treatment. In other systems social treatment is preferred as a preparation for social duties. The methods of treatment under these systems differ widely, and the whole structure, organization, and discipline of the prison are affected by them. The object of the question is to bring out the principles and methods, however varied they may be, accepted in different countries, not merely for punishing the prisoner for his offense, but for properly preparing him to lead a law-abiding life on returning to society.

The question opens the whole range of moral and educational influences which may be applied in prison, and how far they can be adapted to different systems, whether congregate, cellular, or a union of both; whether prisoners are colonized on State farms or organized in State prisons or reformatories.

Both in Europe and America an educative reformatory system is now applied to juvenile delinquents under the age of 16. In some countries it is applied until 21 years of age. In the United States the same educational system, with necessary modifications, has been extended to prisoners 30 years of age. Where shall the age line be drawn? Is not the limit of legal majority arbitrary? A marking and grading system combined with prison school and other educational influences is applied in some prisons even to prisoners in middle life.

It is hoped that the question will secure a presentation of what are regarded as fundamental reformatory principles of universal application, with elastic methods adapted to different conditions.

"Question 2. What improvements may be made in the parole system or the system of conditional liberation already existing in certain countries?"

Many considerations affect the question of conditional liberation which here refers to liberation after imprisonment. In various States the prisoner's time may be shortened so many days per month by good behavior. In other States a marking and grading system is invoked by which the prisoner's eligibility to conditional release is determined. What authority shall decide as to the prisoner's release? How shall boards of parole or courts of release be constituted? Shall they be paid or unpaid? How shall surveillance be exercised over prisoners on parole? How long shall a term of parole extend, and under what conditions shall it be revoked?

"Question 3. What are the best means for assuring productive work for prisoners in small prisons?"

The object of this question is not to open up the whole question of prison labor in its economic relations, but to deal with the practical question of prison administration. Labor in prison is absolutely necessary for the physical and moral welfare of prisoners. It is most easily classified and organized in large establishments. This constitutes an important argument for abandoning the practice which prevails in many American States of committing prisoners to county jails, where they have little or no opportunity for work. The centralization of control by the State and the organization of labor in district prisons by the State will obviate the necessity of using jails except as houses of detention for those awaiting trial.

As, however, many prisoners are committed to jails and small prisons for terms varying from a few days to twelve months, how shall permanent and effective work be provided for them? What forms of hand labor may be profitably introduced? Can prisoners be employed in out-of-door work? The development of the dynamo renders it possible under the cellular system to introduce machines driven by power in a comparatively small place.

The answer to this question will be determined largely by economic and local conditions.

THIRD SECTION.—*Preventive means.*

"Question 1. What is the effect upon criminality of the legal measures taken in different States in the form of probation or suspension of sentence, etc., to avoid the necessity of imprisonment, especially at the time of first conviction, taking account of the age, character, and antecedents of the person? And is it desirable that these and similar laws should be extended?

In certain European and American States the practice of suspending sentence (sursis), or placing offenders on probation under friendly or custodial supervision, has been carried on for a number of years. A body of judicial statistics has been accumulated, valuable for purposes of comparison. It is possible to answer with some definiteness whether the treatment of such offenders without imprisonment has been followed by any increase of crime, and whether the results obtained from placing them under probation have been satisfactory. An interesting and valuable array of testimony ought to furnish an answer to these questions.

"Question 2. What measures should be taken for the suppression of mendicity and vagabondage, especially in view of modern criminal tendencies?

"What rules should be adopted for the organization of workhouses for mendicants and vagabonds?"

Two questions originally separated have been brought together under this head, one of them opening the broad subject of the prevention and cure of vagabondage and the other fixing attention on the best way to treat vagabonds when they are under the grasp of the law.

"Question 3. How is it possible, while paying due attention to the correction of the offender, to lighten the heavy economic burden falling upon families owing to the imprisonment of those upon whom they are dependent?"

More briefly stated, the question is how to correct the prisoner without punishing the family. As laws are at present administered in many States the burden of imprisonment falls heavier upon the family than upon the prisoner. While the latter is sure of shelter and food his family often suffer at home. Obvious relief is furnished in such cases by placing the prisoner on probation under conditions permitting him to work and support his family. In answering question 1 of this section the economic value of the labor of probationers, often seriously diminished by imprisonment, should not be overlooked.

When, however, it is found necessary to commit offenders to prison the conditions necessary for the relief of the families are, first, that the prisoner should engage in remunerative labor, and second, that an adequate portion of his earnings should be assigned to his family.

The desertion of wife and children by husbands and fathers or the failure to support their families, or the failure of others physically capable of work to support their families, has led in some States to more stringent laws as to the arrest and imprisonment of such offenders. Little relief is furnished the family by classifying the offense as more serious or lengthening the term of imprisonment. Other measures for the relief of the family have now been proposed, and are on trial in a small number of places, by compelling a prisoner to work during the whole period of his confinement and assigning weekly a portion of his earnings to his family. In some States the lack of remunerative prison labor may render such an assignment difficult. In other States where prison labor is profitable the assignment of money to the family may be made without difficulty.

"Question 4. Have the experiments of the last ten years made in certain countries providing special establishments for the detention of inebriate criminals, even recidivists, for long periods (two or three years) been successful or not?

"Is it necessary to complete the penitentiary discipline of these establishments by special medical treatment?"

FOURTH SECTION.—*Questions relating to children and to minors.*

"Question 1. Should young delinquents be subjected to the penal procedure applicable to adults? If not, what principles should guide the procedure applied to children and youthful offenders?"

In the last ten years a world-wide interest has been developed in regard to the best legal disposition of children arraigned for various offenses. In the United States the interest thus awakened has found expression in the development of children's courts. In Europe a similar interest is making itself felt in new modifications of judicial procedure. Whether in Europe or America the aim seems to be to submit children to processes which are educational and corrective rather than to those which are penal and oppressive. The legal traditions of the different countries will doubtless modify the practice, but it is hoped that the answers to be prepared for these questions will show not only how widespread is the interest it represents, but also how firmly established is the principle upon which its solution depends.

"Question 2. Should special establishments be maintained for abnormal, backward, and feeble-minded children showing dangerous moral tendencies?"

The treatment of children mentally defective is provided for by institutions in every civilized country, but a certain number of such children show criminal tendencies and commit offenses which bring them under the scope of the penal law. They are not proper subjects for commitment to prison; their limited development prevents them from from fitting into an educational scheme of reformatory institutions. On the other hand, on account of their criminal tendencies they are not welcome inmates of the ordinary institutions for the feeble-minded. Is it desirable to establish institutions for this class, and should

such establishments be adjuncts to existing institutions for the feeble-minded or independent institutions?

"Question 3. What measures should be taken to correct the idleness and vagabondage of children in large cities?"

While the subject of vagabondage and its treament is presented in question 2 of the third section, it is framed here in another form with a view of concentrating attention upon the special dangers to which idle and neglected children are exposed in great cities.

"Question 4. Is it desirable to take special measures for the protection of children born outside of wedlock; and if so, what measures?

"Owing to the neglect or abandonment due to irresponsible parents, are such children sufficiently protected by existing laws and institutions, or is special legislation and provision desirable?"

A QUESTION FOR INVESTIGATION.

Without placing it on the programme of the discussion for the next Congress, the Commission has deemed it desirable to collect information in answer to the following question:

How should local prisons, jails, and lockups be constructed and organized?

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 463.

PROVIDENCE WASHINGTON INSURANCE COMPANY, OF PROVIDENCE, R. I.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

SUBMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF APRIL 22, 1908, A STATEMENT WITH REFERENCE TO THE AMOUNT TWICE PAID BY THE PROVIDENCE WASHINGTON INSURANCE COMPANY, OF PROVIDENCE, R. I., AS TAXES ON THE SAME IDENTICAL INCOME OR PROFITS, ETC.

MAY 6, 1908.—Referred to the Committee on Finance and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 2, 1908.

SIR: In response to a resolution of the Senate, adopted April 22, 1908, requesting that the Commissioner of Internal Revenue be required "to examine and report to the Senate the amount twice paid by the Providence Washington Insurance Company, of Providence, Rhode Island, as taxes on the same identical income or profits, under the acts of Congress approved July first, eighteen hundred and sixty-two, June thirtieth, eighteen hundred and sixty-four, and July fourteenth, eighteen hundred and seventy, and amendments thereto," I have the honor, in accordance with the direction of the President, to submit the following:

An examination of the records in the office of the Commissioner of Internal Revenue shows that the Providence Washington Insurance Company, of Providence, R. I., paid taxes on income or profits under the acts of Congress aforesaid between January 1, 1863, and July 1, 1871, to the aggregate amount of $5,127.19. There is nothing in said records to show that this amount or any part thereof was twice paid by said company, or to show what amount, if any, was paid by the company in excess of the amount due under the acts aforesaid.

The attorney for the Providence Washington Insurance Company has filed in this Department a statement purporting to have been

sworn to by the treasurer of said insurance company to the effect that the records of the company showed that from January, 1863, to July, 1871, the said insurance company owned stock or bonds of the Exchange Bank, of Providence, R. I., to the value of $30,000, from which it received income, and during the period aforesaid paid income taxes to the amount of $5,127.19.

The records of the office of the Commissioner of Internal Revenue show that the Exchange Bank and the National Exchange Bank, of Providence, R. I., evidently both the same corporation, paid taxes upon income or profits for the period above mentioned amounting to $14,009.67. There is nothing in the records, however, to show any community of interests or relationship between the insurance company and the Exchange Bank.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 464.

WIDOW AND HEIRS OF WILLIAM H. BELL.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF MARY E. BELL, WILLIAM H. BELL, THOMAS S. BELL, KATIE BELL PRICE, THEODORE C. BELL, AND FLORA BELL JUDSON, WIDOW, HEIRS OF WILLIAM H. BELL, DECEASED, AGAINST THE UNITED STATES.

MAY 7, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 6, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 10371. Mary E. Bell, William H. Bell, Thomas S. Bell, Katie Bell Price, Theodore C. Bell, and Flora Bell Judson, widow and heirs of William H. Bell, deceased, *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court February 13, 1901, by resolution of the United States Senate, under an act of Congress approved March 3, 1887, known as the Tucker Act:

"A BILL For the relief of the widow and heirs of William H. Bell, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of ten thousand dollars to the widow and heirs of William H. Bell, deceased, for compensation for the use of his invention relating to designating filing jackets, adopted by the Bureau of Pensions March twenty-fifth, eighteen hundred and eighty-two, and still in use by the Government."

The claimants appeared, and in a petition filed in this court August 21, 1901, made the following allegations:

The decedent was a citizen of the United States, throughout his life was loyal to the Government thereof, and never gave aid or comfort to its enemies at any time.

The decedent, William H. Bell, who was at the time a clerk in the Pension Bureau of the United States, invented a device or system of designating jackets for use in the business, files, and archives of such Pension Bureau, and his system was adopted

by the Commissioner of Pensions March 25, 1882, has been used therein ever since that time, and has proven to be of great value in the way of saving the time and labor of the clerks and in the saving of money to the United States. Under the former system in use in the Pension Office it was impossible to prevent errors, one of the most serious and perplexing errors being that of a case belonging to one division in the office becoming mixed or lost in the files of another division. The jackets used in the old system being of one and the same color, it was impossible to detect the error aforesaid until the case was called for in the regular and ordinary transaction of business. Under the old system, when cases were sorted prior to being forwarded to their proper divisions, it became necessary for the clerks through whose hands they passed to take each case separately and carefully read the service of the applicant written upon the face of the jacket in its entirety in order to determine the division to which it belonged. Frequent and constant mistakes were made in the reading of the service of the applicant and in determining the divisions to which the cases belonged, and an endless amount of trouble, time, and labor was involved in the effort to find missing papers or cases. These mistakes necessitated the almost constant detail of clerks to make thorough searches through the files of each division to detect such errors.

All of these difficulties have been overcome by the designated jackets so devised by the decedent, as aforesaid, for they are of such a character that by merely glancing at them the clerk can determine the division to which the papers or the cases should be sent, thus preventing or detecting errors which it would take days or months to correct under the old system. To illustrate: The jackets in the eastern division of the Pension Bureau are designated by red bands or marks. Should papers or cases bearing another color be sent to this division, the error would be discovered before the papers reached the files, and they would be returned to the respective divisions to which they belonged. In the operation of the system devised by the decedent the eastern division of the Bureau is designated by red, the western division by yellow, the old war and navy division by black, the middle division by green, the southern division by purple, and other branches are designated by various combinations of colors. The time consumed under the old system in reading the service of the claimant on each jacket did not amount to much in any one case, but when it is considered that up to this time several millions have been filed, jacketed, inspected time after time, and sent to their respective divisions time after time by the large number of clerks through whose hands they have passed, it becomes apparent that this simple device, made by the decedent, has been of great benefit to the United States in the way of saving time, labor, and money.

The decedent was persuaded to invent the device or system hereinbefore described by statements made to him in conversation with the then Commissioner of Pensions, who said that if the decedent could devise such a system as would prevent or detect the errors hereinbefore described, and would result in the saving of considerable time, labor, and money to the United States, he had no doubt that Congress would appropriate such sum as would be reasonable compensation therefor, provided the Bureau should make use of the system and find it to be satisfactory in all respects. Acting upon this expression, the decedent invented the device or system aforesaid, showed it to the Commissioner of Pensions, who thought well of it, and with the consent of the decedent inaugurated and continued its use in the Pension Bureau on the 25th day of March, 1882, where it has been in constant use ever since to the benefit of the United States, to the amount of $10,000.

The case was brought to a hearing on loyalty and merits on the 15th day of April, 1908.

Messrs. Dudley & Michener appeared for the claimants, and the Attorney-General, by Mr. W. W. Scott, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimants, none being adduced by the defendants, except the reports of the Interior Department and Pension Bureau relative to decedent's employment and duties, and after considering the briefs and argument of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Claimant's decedent, William H. Bell, was loyal to the Government of the United States throughout the late civil war.

II. Said William H. Bell was appointed to a clerkship in the Pension Bureau June 18, 1880, at a salary of $720 per annum; December 1, 1881, was promoted to $900; April 1, 1882, to $1,200; August 16, 1882, to $1,400; September 1, 1886, to $1,600. He died August 22, 1897.

III. The claimants' decedent was an employee of the United States in the Pension Bureau from June 18, 1880, to the date of his decease, August 22, 1897. While so employed as clerk in said Bureau, for which he was paid his regular salary, as set forth in finding II, said claimants' decedent, at the request or direction of the then Commissioner of Pensions, devised, mainly outside of office hours, a system of jackets for use in the business, files, and archives of the Pension Bureau, by means of colored designating jackets for the different divisions in said Bureau, which said system was adopted by said Commissioner about March 25, 1882, and the same has been in use in said Bureau since that time, and has been a saving to the United States of much labor and expense, though the claimants' decedent was at the time informed by said Commissioner that there was no law by which he could be paid, and that any payment which might be made for the services so rendered rested with Congress.

IV. Upon the foregoing findings of fact, the court finds the ultimate fact, so far as it is a question of fact, that said claim is neither a legal nor equitable one against the United States, and whatever payment is made for the services so rendered rests with the bounty of Congress.

By The Court.

Filed May 4, 1908.
A true copy.
Test this 6th day of May, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 471.

PETITION OF ALBERT TALMON MORGAN FAVORING LEGISLATION TO REFORM THE CURRENCY SYSTEM.

Mr. TELLER presented the following

PETITION FROM MR. ALBERT TALMON MORGAN, A CITIZEN OF COLORADO, FAVORING LEGISLATION TO REFORM THE CURRENCY SYSTEM.

MAY 12, 1908.—Referred to the Committee on Finance and ordered to be printed.

To the Senate and House of Representatives of the United States in Congress assembled.

SIRS: The undersigned, your petitioner, respectfully represents that certain events occurring lately in our country require the immediate attention of all whose duty it is to guard the state from self-destruction.

The first of these events in significance is a long line of exposures by newspaper and magazine writers of corrupt practices in our business methods, culminating in an attack by a Wall street speculator upon the good sense and the civic virtue of our people, because of their supine indifference while their substance is filched from them by what he calls "The System," meaning a conspiracy of economic freebooters.

The next, in order of occurrence, is a message from the President to you of a character so unique that it will be known in history as a "Message from the President of these Re-United States to the Congress, on the state of our public and private morals," demanding additional legislation to enable him to reach, and then to secure the punishment of, those who may be found to be responsible for the conditions complained of.

Another of these events is the debate now proceeding, both in and out of Congress—quite world-wide in its character—in search of a remedy.

This discussion is taking a wide range, and while no two of the disputants appear to agree as to the cause or the cure, it is conceded by all of them that the situation, both as to the state of our finances and that of our morals, is the gravest in our history as a people. I shall need to cite in evidence of this widespread concern no more than the following from your daily proceedings as printed in the Record:

On March 6, Mr. Depew, of New York, said:

> I believe in the virtue of the country without conceding the wickedness of the metropolis. There is not much difference in the human nature of the pavement and of the field. The banking mind works in like channels all over the world. * * *
>
> In some counties of Kentucky the price of tobacco is now regulated by the shotgun. Night riders burn the barns and lash the backs of those who are on the other side of the market. The method is original and spectacular, but wholly speculative. * * *

Our financial system is like a pyramid placed upon its apex. The higher it is built the greater the danger of its toppling over, and yet every new strata is evidence of what we call prosperity. * * *

For three days the most prosperous and progressive of peoples, at the high tide of the most wonderful prosperity of their marvelous material development, were on the brink of the most destructive and widespread financial and industrial break-down ever experienced. * * *

With the vast resources which a few speculators can now control, the temptation is great to put the prices of securities or products up or down by cornering the currency. Ours is the only country where this is possible. * * *

I have become convinced of two things: First, that it is impossible at this session of Congress to revolutionize our banking and currency system; second, that it is absolutely essential that we should have at the earliest possible moment some form of emergency currency. * * *

The Aldrich bill, so called, is simple in its remedies, practical, and easily understood. It is a makeshift, if you please, but as long as we can not recreate our system at once, expedients which are effective are essential to meet present conditions. The main thing is to have securities available for the additional currency which are so large in amount and so easy to be held or obtained that the control or cornering of them is impossible. * * *

Men of great wealth and financial genius foresee the storm long before it breaks. If property is to be attacked by legislation or depreciated by a panic they sell out when the public are buyers. They foresee again when the storm has spent its force, repurchase at panic prices, and double their fortunes. It is business men whose capital is active and who are borrowers on their credit to keep their business enlarging who suffer loss or are forced into liquidation or bankruptcy. * * *

But the startlingly tragic character of this debate is best illustrated in the following, from your chairman of the House Committee on Banking and Currency. January 27 last Mr. Fowler said of our banking and currency practices that they are "the worst in the world." And yet he tells us that, "economically speaking," they control the title to "all of the consumable commodities in the country" in their $19,645,000,000 in discounts. So that recently "no one could sell a bale of cotton and transfer title," or a fat steer, or a bushel of wheat, "because our current exchange had completely broken down," on account of "a bond-secured currency which bears no relation whatever to the business of the country * * *."

With more wisdom, if less discretion, Mr. Fowler tells us further that "we are carrying 700,000,000 of bank notes, 600,600,000 of silver, and 346,000,000 of greenbacks on a mere pin point of gold amounting to only 150,000,000 * * * ."

"Credit is the very soul of modern commerce, and upon the average more than 90 per cent of our business is done by check and draft, based upon the book credits of the country * * * ."

"The banks should be compelled to buy gold enough to prove all these credits and protect all their depositors * * * ."

"We must coin our bank reserves out of our standard of value, whatever that may be * * * ."

"Nothing is fit for a bank reserve except gold * * * ."

"Having adopted gold, then, as our standard of value, it is the touchstone of our credit, and it is only by bringing our credits into contact with gold that their value is proved * * * ."

BRINGING OUR CREDITS INTO CONTACT WITH GOLD.

Sirs, before bringing our credits into touch with gold it may be well for us to bring into this discussion not only the experiences of the founders of our system of government, but their opinions also. Of these there are none more entitled to the everlasting gratitude of

mankind than Robert Morris, the head of our finances during the Revolutionary period; Thomas Jefferson, the statesman of his time; Alexander Hamilton, our first Secretary of the Treasury; Benjamin Franklin, the sage, philosoper, and friend of man—each of whom has left on record, for our inspiration and guidance in a crisis like the present, not only a just estimate of the complexity of the coinage problem, of money standards, and of money units, but also of the difficulty of finding a way by which a metallic currency may be made to promote the general welfare.

For example, Mr. Morris, while submitting to the Continental Congress a scheme for a coinage, found it to be his "duty" to mention to Congress information he had received "that guineas of base metal are coined at Birmingham so well as to escape any common attention." And he adds, "Now, there can be no doubt that every such guinea received here would be a national loss to us of an English crown. * * * How much we suffer in this way at present it is impossible to estimate * * *."

On "The establishment of a money unit" Jefferson wrote:

> If we determine that a dollar shall be our unit, we must then say with precision what a dollar is. This coin as struck at different times, of different weights and fineness, is of different values.

And he quotes Sir Isaac Newton's table showing a variation in the pure silver from 308.7 grains to 387. He also says:

> I know of no unit which can be proposed in competition with the dollar but the pound. But what is the pound? One thousand five hundred and forty-seven grains of fine silver in Georgia; 1,289 grains in Virginia, Connecticut, Rhode Island, Massachusetts, and New Hampshire; 1,031¼ grains in Maryland, Delaware, Pennsylvania, and New Jersey; 966¾ grains in North Carolina and New York. * * *

A "grand committee" of the Congress say:

> In France 1 grain of pure gold is counted worth 15 grains of silver. In Spain 16 grains of silver are exchanged for 1 of gold, and in England 15½. In both of the Kingdoms last mentioned gold is the prevailing money, because silver is undervalued. * * * It is a very moderate computation which states our loss on the last twelve months at $30,000 by the commerce of vile coin.

In his first report to Congress, Alexander Hamilton says of the proposal to establish a mint of our own:

> A plan for an establishment of this nature involves a great variety of considerations, intricate, nice, and important. The general state of debtor and creditor; all the relations and consequences of price; the essential interests of trade and industry; the value of all property; the whole income, both of the State and the individual, are liable to be sensibly influenced, beneficially or otherwise, by the judicious or injudicious regulation of this interesting object. * * *
>
> The immense disorder which actually reigns in so delicate and important concern and the still greater disorder which is every moment possible call loudly for a reform. * * *
>
> There are similar diversities in the standards of the silver coins of the different countries of Europe. That of Great Britain is 222 parts fine to 18 alloy; those of the other European nations vary from that of Great Britain as widely as from about 17 of the same parts better to 75 worse. * * *

Being at the time in England, Doctor Franklin was called upon to defend the colonies against a report of the British board of trade, of February 9, 1764, against emissions of paper money in the colonies, and, among many other wise things, said (I quote from his Memoirs, pp. 441–445):

> The truth is, that the balance of their trade with Britain being greatly against them, the gold and silver are drawn out to pay that balance. * * *

However fit a particular thing may be for a particular purpose, wherever that thing is not to be had, or not to be had in sufficient quantity, it becomes necessary to use something else, the fittest that can be got, in lieu of it. * * *

Gold and silver are not intrinsically of equal value with iron. * * * Their value rests chiefly in the estimation they happen to be in among the generality of nations and the credit given to the opinion that that estimation will continue. * * *

A MISTAKE OF THE FATHERS.

Sirs, that at the close of our war for independence Mr. Hamilton, of New York City, and Doctor Franklin, a citizen of the world, without limitations, should not be able to agree on the best system of finance for a people overwhelmed by both public and private debts is not strange when we consider how prone the "business men" of our own era are to forego future promise for present gain and to put off reforming present iniquitous conditions in fear of the consequences to trade.

Accordingly, we find the views of Hamilton prevailing over those of Franklin in the framing of the money provisions of the Federal Constitution, and that they have taken such deep root throughout the Republic in our legislation, our literature, and in our monetary practices that they constitute as great a menace to our future felicity as a people as chattel slavery was in the first century of our national life.

But while it was Franklin and not Hamilton who was called upon to give his great influence in favor of that which his judgement could not fully approve, such was his prophetic vision that he was able to justify his action to himself on the ground that having within their firm grasp the means for working out all of the problems then vexing the country in their newly acquired freedom the free citizens of these United States would eventually come into their own.

Thus we see that while our fathers began the solution of the problem of a metal currency before we have any record of their acts, in a free parliament of their own, and while the controversy was with the representatives of British commercial interests backed by King and Parliament, it was carried into the American Congress backed by Wall street, where it was settled, as our fathers hoped and believed, by the passage of the act of 1792, creating a mint of their own and providing for an honest coinage.

At the close of that desperate struggle whose echoes are filling the world to this day they "resumed specie payments" at a cost of 100 of their war debt for 1 in specie. They were tired of a paper currency. They were determined to have honest money—gold and silver money. What else was a mint for?

But in vain they melted down and recoined the "vile coinage of foreigners." Vainly they strove by every means to keep metallic money from going back into the ground by going abroad or by hoarding. Now it was silver that was causing all the mischief—panics, hard times. Again it was gold. The double standard of Hamilton was "a mistake." The single standard failed. Changes in the quantity or the quality of the metal but served to revive some slumbering or unheard of demon to mock them.

And hence it was that, at the opening of our civil war, the problem of the fathers remained unsolved and became the first, as it was the chief, obstacle to the successful prosecution of "our war for liberty and union, now and forever."

METALLIC MONEY IN OUR CIVIL WAR.

Strangely enough, all who favored the desire of "our erring sisters" to "go in peace" could see nothing but disaster in "coercing them." If chattel slavery should win, "the North" would find itself burdened with a debt like that which afflicted the patriots of the Revolution. If the North should win, it could only be at the cost of such augmentation and centralization of the Federal power as must end in enslaving the States, if not also the white as well as the black man. Slavery, they declared, was an economic question, which must be left "to regulate itself." Besides, were there not in New York City, Philadelphia, and Boston, already, at least two or three men in each who counted their wealth in millions? Here, too, was an economic question rivaling that of chattel slavery, for who did not know that all power goes with wealth? Was it not apparent that the English laws of entail, if not of primogeniture, were already being revived in the practices of "our first families" of great wealth?

Sirs, we need no proof now that the civil war, while glorifying liberty and the rights of man "without regard to race, color, or previous condition of servitude," elevated the dollar to first place in all of the plans and aspirations of our people.

The battle between Benjamin Franklin, the sage, and Alexander Hamilton, the politician, was revived in Congress, represented on the side of Franklin by Thaddeus Stevens the radical abolitionist, and on the other side by our United States Mint, our gold and silver miners, and the later generation of Wall street politicians and influences.

Sirs, the details of that struggle are too fresh in our minds to justify more than a reference to the fact that the disciples of Franklin in all of our civil war Congresses justified the hopes and the faith of our fathers in the future of the Empire they founded. For love of the Union, with liberty, they, too, survived self-immolation.

What though the refusal to base the greenback squarely on the good faith and credit of the nation, or to receive it for all public dues, including duties on importations, was repeating the mistake of the fathers, and, like theirs, must inevitably lead to its depreciation, and a resumption of specie payments as costly per capita as that following the war for independence, if but the Union survived, and the slaves were freed?

What though, with appetites whetted by one such concession, the disciples of Hamilton should find fresh reasons and more patriotic means, through the failure of metalism, for attacking bimetalism, and demand the demonetization of silver and the spoliation of the West?

There lay the route to the Orient. There, between the mighty Mississippi and the far-away Pacific, lay a vast virgin empire. Millions of square miles of virgin fertile soil; of inexhaustible forests; mines of iron, of coal, of zinc, of lead, of copper, of silver, and of gold, quite beyond any wild dream of any one of the fathers! They could afford it—if only slavery were destroyed, the Union preserved, and liberty cherished.

Sirs, chattel slavery has been destroyed, the Union has been restored; but the problem of metal currency for the use of free people, in a new and free country, remains still to vex us—the shirt of Nemesis still binds us. We have grown to the stature of an athlete among the

nations of the earth and our unspent vigor has carried us beyond seas to dispute with the mightiest their claim on the spoil of the East.

But the Indian, the buffalo, the antelope, and the deer have disappeared—have been wasted.

We are told that our vast forests of white, yellow, and sugar pine; of cedar, spruce, and cypress; of oak, basswood, elm, and tamarack may hold out twenty years longer.

Our vacant agricultural lands are all taken. Our immigrants, our own children, must reclaim from our desert regions their future homes on the land or become tenants, servants, or vagrants. Our mines remain, apparently, as exhaustless as ever, but the international metals trust, or other form of the modern trust, owns them or controls them or the money for their purchase. They have passed forever from the free public domain. The absent landlord may or may not be a foreigner. We need no proof that he is master. If we have not adopted him we have "endowed" him. The question of entail or of primogeniture no longer concerns us. We have found an easier, if not a better way. Our constitutions and our statutes have become obsolete, inoperative, or ineffective, and no one seems to care. Instead of a baker's dozen possible millionaires in our three greatest cities in 1860, we now have as many possible billionaires resident abroad or in each of our many large commercial centers, while our multimillionaires are as numerous as our "malefactors," and our men and women of great wealth constitute the chief attraction of every principal resort throughout the land.

Yet, in spite of it all, in spite of this "wonderful prosperity and progress," our problems of a metal currency are multiplied. And whether we believe Mr. Depew and Mr. Aldrich as to the cause for it, or Mr. Fowler or Mr. Hill, it is plain that the "immense disorder" of Hamilton's time has not been cured, but shifted from the coinage to the currency based upon it. So that the menace of the disorder described by Mr. Hamilton is repeated in our own time in the aggravated character described by your chairman of the House Committee on Banking and Currency, when the other day he said in your hearing:

> Sirs, the fortress of all fortresses, the army of all armies, the battle ship of all battle ships, is our Treasury. I now declare that if this Government continues its present policy of injecting into the arteries of trade and commerce a fixed bond-secured currency, by swapping securities, by bond speculation, by Treasury manipulations and by Executive orders, we shall continue to move only with an accelerated speed, and with the directness of a musket groove, and the absolute certainty of passing time, toward a commercial breakdown—a commercial crisis, a commercial tragedy—compared with which the present currency panic is only a pleasant summer outing.

CONSULTING THE ENGLISH.

Sirs, from our dependence upon the mother country in colonial days to the present it has been the custom of our financiers to consult those of England in the framing of legislation relating to our currency. And it appears that from 1870 to the passage of the act of 1873 this practice was repeated. I have not access to the information obtained, except in one instance. It appears that Mr. Hooper, then chairman of your House Committee on Coinage, asked for the views of Mr. Ernest Seyd, the English economist, on the bill then pending for demonetizing silver. I quote from the cordial response of Mr. Seyd,

recorded in the report of the Director of our mint for 1896. Having referred Mr. Hooper to his book, Suggestions on American Coinage, among many other things he said:

In my book I enter fully into the discussion of this matter and show the gigantic consequences to international as well as national trade through the demonetization of silver to which the United States would thus lend a helping hand, and for a number of years this subject of the abolition of silver as tender coin has occupied the attention of European economists. It is the question of the age, and takes precedence of every other matter involved in monetary science. * * * Permit me to beg that you will first investigate the question of double versus single valuation. * * * Men like yourself on framing a coinage bill undertake gigantic responsibility, which strongly affects, not only a whole nation's welfare and happiness, but also that of the world at large. Pray do not despise this language. The deep study of all the principles and interest connected with the organization of social life warrants it.

Mr. Seyd wrote but thirty-six years ago. It is common knowledge that whatever the effect of his plea for silver on Mr. Hooper, silver was demonetized in this country, and no one in or out of Congress was able afterwards to prove just when or by what means it was accomplished. In view of this the language of Mr. Seyd possesses some importance. But in view of present economic conditions throughout the world, particularly in our own country, it possesses a significance which I hope will justify any seeming presumption by one entirely unknown to you, claiming your attention for the consideration of some reflections of his own on money, its origin, evolution, and utility.

SOME REFLECTIONS ON THE ORIGIN, EVOLUTION, AND UTILITY OF MONEY.

Sirs, in the opinion of your petitioner, the character of a people is best reflected in their money.

We only know inductively that what we call money is an outgrowth of pure barter. That it sprang into being concurrently with civilization, in response to a need for something in which to exchange the products of civilization, especially commodities and service. That a bright white and a yellow metal were chosen for this agency, whatever the reasons, will some day afford ample proof of the primitive, not to say barbaric character, of the people of that epoch. But that commodity value should still be insisted on as essential to sound money, after the metal itself is no longer necessary or useful in effecting exchanges, introduces another use or reason for it than barter, however modified or simplified in exchanges. If we say that this is its use as a debt-paying device, we thereby add nothing to the commodity, but emphasize the reason for the new use; acquired by some form of legislation. If it be a fact concerning the evolution of money that it began by exchanging one commodity for another, was not an end put to barter when finally one commodity, or two, was agreed on to stand as a representative of all? And when the utility of the chosen representative, or medium of exchanges, was fixed, with or without regard to its nature or use for other purposes, was not a sure and definite foundation thereby laid for the segregation of that (or those) particular commodity to the exclusion of every other from competition with it? If so, was there not thereby conferred upon such chosen commodity a double advantage over all the others: First, as a medium of exchanges, and, second, as a debt-paying device? Possessing these royal qualities, acquired by statute or by custom, those metals by the same means

acquired also another advantage still, viz, sovereign power as a conservator of individual wealth.

In the opinion of your petitioner this fact alone, when recognized and understood, solves the problem of our fathers, and affords conclusive evidence of the folly of a metal currency for the use of a free people. And this truth is probably no where so perfectly illustrated as in the history of our own metallic currency.

From merely metal standards for our coinage we have degenerated to a metallic "standard of values." From a "money unit" we have fallen to a metal "unit of values." Terms which in all the history of civilized man are coming into vogue for the first time as an invention of Democrats. And you are now called upon to sanction and confirm their employment in our laws and practices by the Fowler, the Aldrich, and the Williams pending bills.

Himself an upholder of the commodity theory of money, Mr. Ernest Seyd, heretofore quoted, refers to our use of these phrases in the act of 1873 as follows:

"The term 'unit of value' (rather vague wherever used) might best be taken as implying a standard of values. * * * Indeed, I do not see why any coin of 'denominational' value should be selected as a special valuator * * *."

And for our phrase standard of values he employs "unity of standard." A vastly different thing, the significance of which difference is strikingly demonstrated in the present effort to bring all "our credits into contact with gold," the "touch stone," that their value may be "proved."

Thus our chosen single representative commodity will have still another advantage conferred upon it by law, viz, that of a regulator of price, when it would no longer be necessary to store wealth in the form of corn or cotton lands or houses, raw material, or manufactures; but only gold (in coin or bullion), with which to purchase immunity from any form of punishment, including famine, pestilence, and war.

Resting securely in this promise, we have gone on hoarding, in a mad race for commercial and national supremacy until we have stored in our National Treasury alone a billion dollars of the people's earnings locked up in our statutory standard of values! Fatuous truth!

Sirs, whatever may be said of our "gold reserve for the protection of our national credit," as represented in our national interest-bearing bonds, and in our national currency redeemable in gold, it failed to protect us in the late panic, when "five billions of our wealth perished in a night." On account of war? No! On account of pestilence? No! These are yet to come.

Having learned from Mr. Fowler and from others, as well as from experience, that "having adopted gold as our standard of values," we must abide the consequences; many of us will feel a certain dread of things to come—a possible discovery of still another quality in gold in addition to its usefulness as a medium of exchange; a device of the law for paying our debts; our sole conservator of individual as well as of national wealth and regulator of price, viz, the quality of sovereignty.

Sirs, judging from your divided councils, as much as from the remedies proposed by you, we may be very certain that nothing short of

war, or pestilence, or famine, is ready or able to rescue us from that absolute dominion toward which our "gold standard of values" aspires.

WHAT IS A STANDARD OF VALUES.

Sirs, I am convinced that the American people will come to see, in time to escape so malign a consequence of our metallic money, that such a thing as a standard of values is impossible. That it is a chimera having its origin in uninstructed minds, or in minds insane from a belief that value resides in things; whereas it can only abide in certain faculties of the mind—those for weighing, judging, and determining.

For example, we have a standard of weights and measures—"the brass troy pound weight of Great Britain," and, say, the yardstick. But does the yardstick measure money, values, or price? Does the pound weight? Has anyone yet attempted to establish by statute a standard of morals, opinions, beliefs, or estimates? In England they have the State Church—an attempt to establish a standard of worship, of ceremony. But who will establish a rule for the vagaries or the achievements of the mind of man—his tastes, his desires, his needs?

WHAT IS A UNIT OF VALUE?

Since value can abide only in the mind of the valuer; attaches to things solely by reason of human tastes, desires, needs, ability to obtain, and capacity to enjoy; does not inhere in things, and hence must be variable, existing without regard to utility, how will we go about regulating values by statute?

Sirs, utility is quite another thing. Of what value were our golden eagles to the natives of Samoa who gathered them from the wreckage of our war ships there, and could find no other use for them than as ornaments for their naked bodies or as marbles?

Man has been guilty of innumerable follies. But why will he persist in confounding value with utility, as the chairman of your House Committee on Banking and Currency does when he contrives a statute turning over to another (whose business it is to profit by the transaction) what he shall pay for his food and clothes, or for a patch of ground and the tools for tilling it?

Or, if you can do so, and remain sane yourselves, think of such an interpretation of man's destiny on the earth as requires him to have a material unit of values—a "gold valuator" for the labor of his heart, his head, or of his hands; of his home, of his wife, of his children.

We have the figure "1," upon which we rear our vast pyramid in numbers, called a unit. We also have the "dollar," as when we say ten dollars, a half dollar, and so on (an abstract quantity or number like the figure 1), upon which we rear our vast pyramid of accounts in commercial exchange—a device of the law for our convenience. Must we therefore conclude that this ideal unit, which we can change at pleasure by legislative decree, can possibly be anything else than a representative, or possess any other than a representative character?

Who can create the concrete dollar any more than he can a grain of gold or silver? Shall we be permitted to say that because we can see with our eyes and handle with our hands a gold or silver coin of the denomination of a dollar that therefore the gold or the silver in them

is the dollar, a product of legislation, and hence that the legislator is the creator of the gold and the silver. That the act of keeping count is production? Or that it controls production? In other words, that the dollar rather than the mind creates and controls wealth? That the symbol is the thing? And hence, therefore, that the dollar of the banker, the system of the international metals trust, and not that of the legislator, controls values, and hence the price of whatever we crave or must have?

Yet this is what Mr. Fowler, upon his own confession, is endeavoring to get Congress to do at once. It is what Mr. Aldrich, Mr. Williams, Mr. Depew, Mr. Lawson, and everyone who favors our gold standard and its gold-dollar unit of value are favoring when they insist upon redeeming our national and our bank money issues in gold, because, economically speaking, our statutory standard of values, as prescribed by the act of 1873, actually controls the price of everything as long as it controls our credits in either book accounts or in currency.

OUR BOOK CREDITS.

And, sirs, on what are our book credits based, and the credit of the banks, if not on Mr. Fowler's "mere pin point of gold?" He tells us that more than $19,000,000,000 of our wealth is based, not upon the credit of the nation with its more than $100,000,000,000 of wealth, as it ought to be, but on the credit of banks whose credit in turn is grounded on a mere pin point—a mountain upon its apex. And why?

If Mr. Fowler must be accepted as competent authority, and the advocates of a fixed material standard of values and a fixed quantity of money per capita are to be followed—by which is meant the quantitative and commodity theories of money—it can only be for the purpose of creating a deficit; in other words, an excuse for a bank-credit currency and the levy of a tax in the form of interest upon the business of the whole country—a tax which all who use money in business, or their credit, must pay, and which, in the final accounting, the producer must pay, though it shall give to the usurer the mountain, to the producers of all wealth the bare pin point in the shape of a mere subsistence.

And again why? And again I answer: If Messrs. Aldrich, Fowler, Depew, Lawson, and our President are to be believed and followed, it can be for no other reason than because some one has gold bullion to sell. Therefore the people's banks must be compelled by statute to purchase it and lock it up in Treasury and bank reserves.

And who has this bullion for sale if it be not our international metals trust; which, through its system of interlocked directorates, controls our smelter trust, all of the great gold-producing mines of the world; has destroyed all competition for ores, and, through legislation now pending, aspires to the control of prices in all of the world's markets by controlling the reserves of all of the world's banks and public treasuries?

And, yet again, why? And again I answer, and challenge a denial of its truth from any source: Because, and solely because, of our inherited superstition that good money must have a "redeemer" at any and every cost. One which, to possess any value whatever for man, must itself be redeemable in the fruits of man's labor—in service, in goods; which

he must accept without questioning its infallibility, as the only possible agency for effecting his exchanges, at the peril of a forfeiture of confidence, of credit, and of the fruits of his toil.

A superstition lodged in the mind of man at a period in his development when all women were slaves, and most men were ideal commodities passing by the same legal device as the soil they tilled with a crooked stick—just like any and all other incorporeal hereditaments.

A superstition sanctified by the priesthood when all money was coined in the temple of a favorite god or goddess, and needed no other redeemer than the blessing bestowed on it when received back in tithes by the priest, who returned it to the general circulation.

A superstition in whose laboratories pure science was deflowered as often as avarice and political concupiscence required the sacrifice.

A superstition upheld now, as it has ever been, by blind worshippers of that ancestral light which makes our present light a crime, and crowns with thorns the patient bearers of it.

A superstition inherited by our forefathers from their forefathers, and which, when they assumed "among the powers of the earth the separate and equal station to which the laws of nature and of nature's god entitled them," they accepted and made their own—failing not to prescribe the death penalty for any willful violation of the money or the theories of finance which, in all times and under all conditions of mankind, have been the mainstay and refuge of tyranny in some one or more of its forms.

A superstition that in our beloved country to-day obsesses democrats—God save the mark—to endow the corrupt offspring of their physical, mental, moral, and social inferiors with a large share of the money they have filched from the earnings of their fellow-democrats, to induce them to marry their daughters, in the hope of thereby gaining entrance for themselves into the society of those aristocracies of the Old World which American resources, ideals, and institutions were designed to uproot and destroy.

An obsession which made our fathers oblivious to the lessons of all history, which continually teach that in their laws, customs, and practices democracies ought to get as far away from the practices, customs, and laws of kingcraft as space, time, opportunity, means, and the intelligence of the people will permit—if they would have their institutions thrive; and hence, when they founded the first government on the earth to recognize the political and civil rights of all men and their equal enjoyment of life, liberty, and the pursuit of happiness, set about the preservation of them under the leadership of a New York representative of Wall street—then as now an ally of Great Britain—rejected all importunities for a free money for the use of free men in a new and free country, and adopted as their own the economic theories and commercial tools of pagan priestcraft and medieval kingcraft with which to work out the destiny of their country.

Theories and tools that bear their most legitimate fruit in countries dominated by men who call themselves freemen because their constitution of government proclaims it, but who acknowledge allegiance to theories of money and of finance that are without science or system, bear the least possible relation to our present aspirations or needs, and so cumbersome and costly that, if we take into account the annual cost of our mints; of our necessary expenditures for the protection of our

coinage against fraud; loss by abrasion and by accident; by unavoidable waste in our laboratories; by exportation to foreign countries, where they may be melted down and recoined into foreign money; loss by hoarding and by shipwreck on the high seas; add to the sum the tribute we pay to those who send us in quest of gold-producing mines; add to that the tribute called interest, exacted by the usurer when he impudently usurps or secretly purchases the prerogatives of sovereignty to furnish us an acceptable substitute for gold (on the plea that there is not enough "honest money" in the world to supply the demands of our ever-increasing commerce and trade); add to that the treasure squandered in dreadful wars for the possession of gold discoveries when located; and add to the grand total the moral and political consequences of the error—I find that the amount equals, when it does not exceed, the aggregate of the public and private indebtedness of the pagan and so-called Christian peoples on the whole earth; that it is the unrecognized cause of poverty; the disturbing factor in human affairs; the mortal antagonist of all honest capital, as well as of all honest labor, and that it is the one remaining barrier to true industrial progress and peace.

REVOLUTIONS NEVER PRODUCE, BUT ALWAYS FOLLOW, CAUSES.

Sirs, mortal man may not challenge the thunder's bolt, yet he has succcessfully harnessed it. He shall not surprise his Creator nor commune with Him face to face and live, but he may see and understand Him in His works.

When I attempt to trace him in human history, I find that man has had set before him from the beginning something to draw him out of the spell of his environment, outward and onward, yet ever upward. And that he has obeyed this law as naturally, as constantly as the plant whose very life is dependent upon the sun toward which it inevitably turns. And I find this law supremely manifest in the apparent ease by which man's superstitions have fallen from his mind one by one until there now remains but this one delusion concerning gold.

In pursuit of it man has traversed all seas, robbed the desert of its terrors, traced every river and climbed the last mountain on the face of the whole earth. Its mission is closed. It no longer serves its original design. The proof is at hand in the fact that we now rarely employ gold in effecting our exchanges, but a paper representative instead and hoard the thing itself.

If we will but subtract from the sum of our gold coinage from 1792 to 1896, $1,814,692,253 (see Mint report for 1896), our losses by export, by the melting pot for use in the arts and from all other causes, from the remainder deduct our public and private hoards and what ought to be in our bank reserves, we will be able to realize how insignificant must be our actual gold circulation compared with the total of our exchanges, when our discounts, according to Mr. Fowler, are more than $19,000,000,000.

If, then, we should undertake to question our economic authorities, like Professors Jevons and Sherwood, of what earthly use our gold coinage is to us, what its "work," or function, in the "mechanism of our exchange," they, even they themselves, must admit that it serves us extremely well as a lure for credit money, on which we must pay interest, to the profit of the bank.

Sirs, the truth is that Christianity, as it is rapidly coming to be understood, having survived the pagan superstition that we must have the rarest and most expensive commodity in which to exchange values, is now at war with those pretenses, to call them by no harsher name, by which governments put upon private corporations the necessity of lying when they issue their notes to be received as money, and employed in the sacred office of exchanging the products of Christian industry, as they all do lie when they promise to redeem them in gold, well knowing that there is not a tenth part enough gold in existence to make their promise good—a practice so vile and barbarous, so ill adapted to modern life and conditions, that it is no longer difficult to realize that their doom has been sealed and the period of their sway determined ever since the art of printing was availed of as a means of spreading knowledge for the discovery of truth, and the rights of man were proclaimed throughout all lands and over all seas.

Already men of sound mind are beginning to feel shame when framing a necessary justification for so stupendous an imposition upon human credulity. The fact that one-half of the intrinsic value, so called, of silver has disappeared since it was demonetized is very naturally suggesting the query, what would become of the "intrinsic" value of gold if the legal-tender quality were taken from our gold dollar? In such an event what would become of those 900,000,000 in gold bullion stored in our strong box at Washington? Of the similar amounts stored in Russia, Germany, France, England, and elsewhere, upon which the public draws no interest, which may not be coined and poured into the general circulation for the relief of mankind, but must be hoarded in bank reserves to redeem note issues upon which private persons are permitted to subsist in luxury, for no other or better reason under the sun than because in America, as in Europe and Asia, it has been discovered that a governing class is required for the preservation of those natural rights to the enjoyment of life, liberty, and the pursuit of happiness which our fathers wrenched from Great Britain.

Sirs, your petitioner humbly submits that in his deliberate judgment that day has passed from off the face of the earth. The eighteenth century after the birth of our elder brother, Jesus of Nazareth, heralded the fact when our nation came into being. The nineteenth pledged the world to government of the people, by the people, and for the people, when Abraham Lincoln and our boys in blue, of whom I am one, pledged their lives, their fortunes, and their sacred honors for the preservation of Union with liberty, and the twentieth is preparing to make good the pledge and vindicate the rights of man above the power of the dollar.

No intelligent observer will deny that we are rapidly approaching another crisis not unlike that of 1776. In the intellectual world we are not only breaking the chains of slavery to superstitions, we are discovering truth for its own sake.

In the political world, despotic power, trembling on crumbling thrones, is being wrenched from the hands of kings and czars and restored to them to whom it belongs. And in the realm of industrial empire millions are hearing the voices of freedom and responding to its call.

Everywhere there are rumbling demands not only for social progress, but also for social life.

At last men are coming to realize what our prophets and sages have dreamed and taught as in a dream for more than two centuries, viz:

That further development and progress on any of the lines of modern thought and aspiration is as impossible of attainment under our present monetary standard as would be further progress in agriculture or in any of the arts with those tools which experience has discarded for something better, and that for that reason, if for no other, our theories of money and monetary standards must yield to our present need.

Sirs, scrutinize my words. Their meaning is plain to me. But if anything be lacking to make that meaning plain to you, listen to the language of a member of your House Ways and Means Committee, Mr. Hill, of Connecticut. I quote from the record of the day's proceedings.

Mr. Hill said:

> I look around on this floor and I see bank presidents and bank directors, and I am going to propose a question: Did any of you gentlemen, in your connection with the banking system of the United States, when you proposed to issue some notes or to withdraw them, ever take into consideration the general good, or did you do it merely with reference to the profit or loss of your own bank? Let somebody stand up and show me a patriot who has done it for the general good. [Laughter.] I say as a bank officer of a number of years' experience that it never entered my thought to do it. I always felt that I should be derelict in my duty to our stockholders if I did not consider first the question of profit and loss to our own bank. And you can not get 6,500 independent banks in this country to act in harmony with reference to note issues or with reference to withdrawals except on the question of profit and loss. We may as well face that proposition. * * *

Sirs, what proposition? What does Mr. Hill mean? Is it not a confession in the nature of a boast that our fellow-citizens to whom our Congress has turned over their duty to coin (make) money and to regulate the value (denomination) thereof, are using this high prerogative of sovereignty for their own profit as absolutely, freely, and unblushingly as any of the kings, bishops, or priests of the middle ages or of imperial Rome ever did? And when the present members of our Congress are reminded of this fact the joke on the people is so apparent as to excite—tears? No, no! This is our American Congress under the single gold standard of values.

Sirs, is this a strained interpretation of the language of Mr. Hill? Do you say that banks do not "coin money?" Do you say that to coin is not to make money, or that the making of money is not coinage of it? Do you say that the real joker in the game is still unrevealed? If so, bear with me a moment longer.

We will all agree that banks are for the convenience of the people in effecting their exchanges, and that a man may be an excellent banker and a very inapt statesman—may, in fact, know nothing of the philosophy of money or of governing. We also will agree that banking is business, while governing is politics. But even then we must agree either that Mr. Hill is a poor business man and an inferior statesman, or that, being only a banker, he told the truth about our present system of government by banking. But, perhaps, after all Mr. Hill means that bankers never think of the public welfare when they see a chance to make money for their bank by drawing in their notes and squeezing from the people, or some of them, the fruit of their toil, because the law permits it.

But you may say that bank issues are not money; that gold coin alone is money. And since gold coin come to us from the mints of

the United States, the mint and not the bank is the usurer—the Shylock. Is this the real joker in our national game of finance? If so who plays it, the banks or their victims? Right here Mr. Hill's colleagues should both laugh and applaud. Applaud Mr. Hill and laugh at the folly of the people who can not find the joker in the bunco game played by our Government when it obeys the Constitution to coin money, and then to obey the banks locks up the coin and turns over to the banks the right and the power to issue a substitute for it to "the profit of the bank," because you can not get banks to go into the business of governing without their profit in the transaction.

In view of this interpretation of government and of banking, why should not banks cry out against any reform which permits the people's Government to go into "the banking business." Is this the real joker and why Mr. Hill's colleagues laugh when the truth is told about them by one of their own number?

Sirs, if we put together what Mr. Depew, Mr. Fowler, and Mr. Hill say and test it by what Mr. Lawson says and the President recommends, under the bright light of our Constitution, which makes it the plain duty of Congress to create, issue, and regulate the issue of money according to the needs of the people, the present practices of our bankers look very much like downright stealing, and would no doubt be so declared by any court having jurisdiction were it not for the fact that by turning State's evidence the bankers would be able to convict you as accessories before the fact.

THE AWAKENING.

Sirs, in the deliberate judgment of your petitioner, we have been facing Mr. Hill's proposition for some years. It began in the colonies when our fathers were sacrificing their generation to settle their war credit issues on the basis prescribed by hoarders of gold and silver; was continued when our New York bankers, whose minds, according to Mr. Depew, "work" in the same channel as those of London, Paris, and Berlin, demanded as a profit for their assistance in suppressing our slave holders' rebellion the degradation of the nation's credit, in our greenback issues, and at the close of that struggle demanded a contraction of our currency at a time when it was most needed for repairing the ravages of war, both at the North and the South; and now returns to the "rescue" of our country from the perils of a threatened crisis beside which the one we have just escaped is but a "pleasant summer outing," with fresh demands for greater "power," and still greater "rights," over not only our banking facilities, but also over the currency—rights and powers which can be of no possible advantage to the country, nor to the banks except as a means of forcing our banking, railway, mining, and manufacturing corporations into a common pool under the control and direction of our international metals trust.

Sirs, it is the further deliberate judgment of your petitioner that the Power on this earth of ours whose right it is to reign in the hearts of men is already summoning those governors and those governments that from ignorance or from design accomplish the subjection of mankind to Belial, through the employment of a so-called base for a circulating medium which costs the subject more than he is permitted to receive for it when he pays his debts, or exchanges the

products of his labor, before the bar of an outraged public opinion—none the less righteous because it is scorned—where they will be required to show why, when their trusting peoples asked for bread they were given a stone, the weight whereof upon every industrial enterprise is wringing from freemen a cry that, piercing through all of the cunning devices of Gog and Magog, will ascend quite to the throne of all mercy, truth, goodness, wisdom, power, light, and of all love, where it is certain to be heard and answered. In famine? No! In pestilence? No! In war? No! No! In the hearts of men and women too firmly grounded in their love of liberty, and too familiar with the blessings of our free institutions, to stray far from their common source, however great the lure of the resources provided by nature in a new country for a common spoil.

Hence, sirs, your petitioner, in all humility, submits to you that instead of fumbling with fingers palsied from long disuse amongst the branches of the giant tree of business and commercial cowardice and downright dishonesty in a vain search for the particular twig that is producing those abnormal excrescences upon its lusty trunk, which excite our admiration or our wrath, according as we ourselves are honest or dishonest, it is your plain duty as the commissioned and sworn guardians of the public welfare to put the ax to the root of the tree and destroy it.

THE PENNSYLVANIA PAPER CURRENCY OF 1723.

Sirs, I turn with great pleasure from a consideration of the known result of our inherited metal-currency practices to the paper money of Benjamin Franklin during the colonial period in Pennsylvania, and shall quote from his Memoirs above referred to, pages 441 to 445:

> If carrying out all the gold and silver ruins a country, every colony was ruined before it made paper money. But, far from being ruined by it, the colonies that have made use of paper money have been and are all in a thriving condition.
>
> New England, particularly in 1696 (about the time they began the use of paper money), had in all its four provinces but 130 churches or congregations; in 1760 they were 530. The number of farms and buildings there increased in proportion to the numbers of people; and the goods exported to them from England in 1750, before the restraint took place, were near five times as much as before they had paper money. Pennsylvania, before it made any paper money was totally stripped of its gold and silver; though they had from time to time, like the neighboring colonies, agreed to take gold and silver coins at higher nominal values in hope of drawing money into and restraining it for the internal uses of the colonies. * * *
>
> But this practice of increasing the denomination was found not to answer the end. The difficulties for want of cash were accordingly very great, the chief part of the trade being carried on by the extremely inconvenient method of barter; when in 1723, paper money was first made there, which gave new life to business, promoted greatly the settlement of new lands (by lending small sums to beginners on easy interest to be repaid by installments) whereby the province has so greatly increased in inhabitants that the export from hence [England] thither is now more than tenfold what it then was; and by their trade with foreign colonies, they have been able to obtain great quantities of gold and silver to remit hither [England] in return for the manufactures of this country [England].

New York and New Jersey have also increased greatly during the same period with the use of paper money; so that it does not appear to be of the ruinous nature ascribed to it.

And, sirs, what was this money but a printed slip, issued by law as a legal tender—against gold? Nay, nay! Against any metal? No, sirs! Redeemable in any metal? No, no, no! It was issued solely against the land of the applicant for it.

The governor of the colony thus refers to this money (see Pownalls Administration of the Colonies, 4th ed., p. 186).

Paper money thus lent upon interest will create gold and silver in principal, while the interest becomes a reserve that pays the charges of government. This currency is the true Pactolian stream which converts all into gold that is washed by it. * * *

Sirs, in the light of this experience it would seem that the problem of a metal currency, over which Hamilton and others wrestled so brilliantly, is, after all, as they would have us believe, a most difficult one. Then why not dispense with metallic money and employ something better—more suited to our needs?

When a deed is done for freedom,
  Through the broad earth's aching breast
Runs a thrill of joy prophetic, trembling
  On from east to west;
And the slave, where'er he cowers, feels
  The soul within him climb
To the awful verge of manhood, as the
  Energy sublime
Of a century bursts full-blossomed on
  The thorny stem of time.

New occasions teach new duties. Time
  Makes ancient good uncouth;
They must upward still and onward
  Who would keep abreast of truth.
Lo, before us gleam her campfires. We
  Ourselves must pilgrims be;
Launch our Mayflower and steer boldly
  Through the desperate winter sea,
Nor attempt the future's portal with the
  Past's blood-rusted key.

THE UNRECOGNIZED CAUSE OF ALL OUR MONEY TROUBLES.

Therefore, sirs, your petitioner, appealing to "The Supreme Judge of the World" for the rectitude of his intentions; firmly relying upon the protection and guidance of Divine Providence, and with undimmed faith in the future glorious destiny of his country as a servant of the Most High, doth specifically charge that the tree of business, political, and social immorality about the sturdy growth of which in our beloved country we do all complain, hath its root in and is nourished by our inherited theories and systems of money and finance—our inherited metallic money—and our effort to establish a metal, so-called, standard of values.

A standard which, when it blossomed at both ends, in either gold or silver coin, was but one evil the equivalent of another, and which, since the demonetization of silver, has been compelled by statute to bear the dead weight of a world-wide financial pestilence.

Sirs, if while in pursuit of any object it is important to choose the right means to the end, how imperative it is when the purpose of a legislator for more than eighty million American free men and women is "the righteousness that exalteth a nation." For then it is the right means only that can accomplish the heart's desire.

And how shall we know the right means?

Sirs, there is an infallible guide. When we do not find it in our own experiences we may go to history and learn from the experience of others. And if we go to that source with judgments unbiased by

fear, unwarped by prejudice, and untainted by interest or desire, we shall find it. And this is true though history itself be false. For beyond and underlying all history are the results as known to ourselves. Examining history in the light of the known results to ourselves we know with absolute certainty what have been the consequences in all the past of metallic money upon the peoples who have preceded us. Knowing how difficult it is for us to let go of our inherited superstitions concerning money, we know how difficult it was for our fathers. But a time comes when our most cherished opinions and beliefs are confronted by conditions evolved by the universal law of compensations, and they fall from us as though they had never been. That time has arrived in the evolution of money. The universal acceptance of the gold standard in an age when knowledge is universal, in a country where more money is annually spent on free public schools for all than is spent on both the Army and Navy, is the challenge of the gladiator in an arena where home and fireside, country and friends, wives and sweethearts, liberty and law, are the forfeit in a battle between truth and error—the very right and the very wrong of things.

SOME EVOLUTIONARY PROCESSES IN OUR MONETARY SYSTEM.

Sirs, if Mr. Ernest Seyd has survived the demonetization of silver, doubtless he is aware of both the moral and economic consequences of the coinage act of 1873. He, however, may not yet realize the fact that the free coinage of that metal, at any ratio to gold, was an insufficient remedy for the errors of any system necessary to sustain the commodity theory of money.

The single gold standard is no more than the necessary result of that theory. And no special pleading, nor sentimental appeal to love of country, of party, or of God or man can alter or change it. The inexorable requirements of evolution in government, as in things, can no more wait on human than on material conditions; but with infallible rectitude in the choice of means, as much as in the occasion for their exercise, removes them as patiently but as surely as one acorn through the unfolding twig and aspiring oak unfolds itself from another. But with this difference, viz: Whereas the acorn multiplies itself in obedience to the law of chemical selection, and therefore perishes by change, man multiplies himself by the exercise of his free will, and hence above all things, above all else enjoys the power of immortality through choice. Possessing this power, he enjoys the right of self-defense, of self-preservation, in the exercise of which in conformity with the law of his unfoldment he must and will select the necessary means to the end.

In the course of our civil war we repeated the blunders of our Revolutionary sires. We promised to pay coin when the world well knew that we did not have and could not get the coin with which to keep the promise, and the usurer took all possible advantage of the error.

This was not a violation of the law of evolution in government; it was a fulfillment of it. Just so now, if we persist in our fatuous folly that value resides in things; if we go on piling up our interest-yielding credits based upon a lie until, from repeated exposures of the character of that credit the people shall come to see and understand the reasons for it, the doleful apprehensions of our so-called financiers

will find their verification from a source that will surprise them, if they are sincere; because it is as true to-day as aforetime that God is not mocked. The law must be vindicated. And the penalty is everlastingly according to our light.

Hence, sirs, your petitioner, one of those arraigned by the Wall street gambler for want of common sense, or spinal nerve, and in whose behalf the President pleads, justifies his further intrusion upon your time and patience by the fact that at this particular juncture he finds so few who appear to realize the exceptionally treacherous character of gold, both in its native state and in its artificial relation to other commodities as our "basic money" and "standard of values," or the imminent peril of our free institutions, from our metallic money, because of the impossibility of finding its science without looking for it in its character as a product of legislation. For which reason there are no two of us agreeing either upon the source of our money or upon the remedy adequate for the evils complained of.

Sirs, that our gold and silver legal-tender coin possesses commodity value is, of course, admitted. But that the value of our silver dollar, either as a debt-paying device or as a medium in which to effect our exchanges, is determined in the market while that of our gold dollar is determined at the mint, or vice versa, is denied. It is denied for the reason of our everyday experience that, since with our gold dollar we can purchase silver enough for two dollars, while with our silver dollar we can purchase only gold enough for one dollar, for any rational explanation of the anomaly we must go to the statute, where we find the value of both determined by the law regulating their coinage and debt-paying power. It is also denied for another reason, having a still higher source, viz, it is not true.

Nor is it true that commodity value is essential to real or sound money. Whatever may have been the requirements of commerce and trade in the past, modern commerce and trade demand for ther future freedom—for their very life—a circulating medium entirely divorced from barter in any of its forms. To accomplish this it is essential that both the users of money and the authority issuing it shall be in perfect accord and both know what is meant by the science of money. In other words, must be able to apprehend and understand what money is.

That this is impossible now, when we have gold coin for a "basic money;" silver, nickel, and copper coins for a "token money;" national-bank notes, gold certificates, silver certificates, bank drafts, and clearing-house certificates for a "credit money," and all resting upon the love of country, fair play, regard for the public welfare, and moral sense of our international metals trust, owned by Messrs. Rothschild et al. in England, and Messrs. Rockefeller et al. in Wall street, ought to be evident to all except the owners of the said trust, their agents and employees, and such of our economic writers and statesmen who tell us that "nothing is fit for a bank reserve except gold."

That "we can not abolish doing business on a margin of cash and the balance on credit."

That the value of the gold in our gold dollar is determined by the value of that metal for use in the arts.

That money is wealth, and yet that we are not attempting the creation of wealth by act of Congress when we attempt to establish a standard, and a unit of values.

AXIOMS IN MONETARY SCIENCE.

A. We can no more regulate the value of money having for its base anything possessing commodity or market value than we can the direction of the wind.

B. When we make any one commodity a legal tender in the payment of debts we not only invite and stimulate speculation in that one, but also in all that may in any manner be brought "into contact" with it.

C. When we succeed in bringing all our credits "into contact" with gold we will have so narrowed the range of prices as to make it possible for owners of gold to raise or lower the price of everything according to their will.

D. When we shall have given to any other power than ourselves the free regulation of prices we will have also surrendered the power as well as the right of self-government.

E. The law of supply and demand, as now stated and understood, is a reversal of the order of affairs in the Divine economy and must yield to that of demand and supply. Hence, it follows, that instead of the demand waiting upon the supply until it is starved into submission to the exactions of supply, demand ought to be permitted to call money into being at need and be subject to no other restriction than may be found needful for the protection of society against unequal or unjust demands by any one or more of its individual units.

F. Money, when divorced from commodity value, being no longer a measure of anything, but instead thereof a representative or symbol of wealth in values, is as readily apprehended and understood as any truth or fact, and its science therefore is no longer abstract or speculative, but is as exact as that of numbers. Hence, money need have no statutory limitation nor any other restraint whatever upon its quantity or its circulation or upon its exchange and debt-paying power than the total volume of the actual wealth of the nation or society putting it into circulation.

G. When divorced from commodity value, money becomes a symbolic representative of wealth and is not the thing itself. Consequently there will be no profit in cornering nor in hoarding of it; hence no speculation in money.

H. When relieved of its speculative character money will find its true functions and normal level, viz, a device of the law for paying debts, by virtue of which it will become the sole medium in which to effect the exchange of the products of industry.

I. Stripped of commodity value and resting solely upon the will of the producers of all wealth for its being and utility, money must become the servant rather than the master of man—the handmaiden of human enterprise.

J. When purely a product of legislation, money, whether in coin, checks, or printed slips, eliminates barter from commerce and enables man to become the architect of his own fortunes, since he could hardly be persuaded to pay anything to another for that which he himself creates.

K. Every producer of wealth is entitled to enjoy the use of a representative in the total volume of the circulating medium of his country, the exact equivalent at all times and under all circumstances of the

wealth he creates. The sure corollary of which right is a guaranty by the State to every investor, spender, and owner of money that its character is inviolable, certain, and perfect. Something that can never be while money possesses market or intrinsic value.

L. Money being for the sole use and convenience of the individual units of society, and of society in its organic relation to its units, it follows that it ought never to come into existence in any other manner, from any other source, nor at any other time than upon demand of the social unit who is a producer of wealth or of society, and in either case under such regulations as may be deemed wholesome, and necessary for the public welfare.

SOME UNRECOGNIZED RIGHTS OF THE FREE MAN.

A. Man's title to a representative of the wealth he creates is essential to his enjoyment of a just share in the total wealth of society. Therefore man's right to call money into being is an inherent and enalienable one, coincident with his right to produce, and should never be exercised by a nonproducer. For which reason grants by reigning sovereigns in Europe during medieval times to court favorites, powerful land barons, and heads of the church to coin money and regulate the value thereof were no more vicious or destructive of the natural rights of Catholic Christians, or of civilized man than similar grants by our Congress to private or quasi public corporations called banks.

B. Money being essential to the protection of society against all forms of anarchy and every assault from without, the power to call it into being should be exercised only under such wholesome regulations as may be found practicable, necessary, and effective. Hence the demands for money should be complied with by government as often as the application is accompanied with proof that the requirements of society necessary to the public welfare have been complied with. For which reason the right of society to money whose science is apparent is inherent, inalienable, and can not be delegated:

C. It is one of man's inherent and inalienable rights to know at all times that the money supply will equal his need for it. Therefore a denial of man's right in our present practice of issuing money in advance of the demand or need for it, and at a fixed rate or sum per capita, will be apparent to all who will admit that the demand should regulate the supply.

D. The cost of Government ought to be borne by each individual unit of society in the ratio of benefits or favors each is able to derive from its protection. Hence all forms of property of industrial effort or enterprises ought to be exempt from taxation in any and all of its forms and the burden thereof placed upon the device of the law for paying debts and exchanging the products of industry in order to guarantee a just distribution of the money and also of the burden.

Sirs, in the deliberate judgment of your petitioner, the foregoing monetary axioms and rights of the free man are fundamental and vital. That they are not now active in the practices or the thought of mankind is due primarily to the fact that they have been overlooked or ignored by our economic authorities and statesmen while considering less apparent and less vital rights and monetary principles.

SOME PRACTICAL SUGGESTIONS.

Wherefore, sirs, your petitioner doth humbly pray, that, putting aside every other consideration, or interest, and with minds solely bent upon the welfare of your country, you forthwith create a joint high commission; one-third to be appointed by the President of these United States; one-third by the House of Representatives, and one-third by the Senate, in Congress. And that you definitely provide that no banker, money lender, or dealer in money, stocks, bonds or other commercial accounts or securities whatever; or company, corporation, organization, or person owning or controlling any stock, or other pecuniary interest whatsoever in the same, shall be a member of the said commission.

Also, that when the said commission shall have been duly qualified they shall be required to faithfully inquire and determine for these reunited States:

First. Whether the allegations made by the said Lawson and others in their various publications concerning the business methods and operations of Wall street, and of our people of great wealth, called by some "The System," are, or may be, true;

Second. Whether the said message by the President, more or less confirmatory of the said charges and complaints, is worthy our acceptance and guidance.

Third. Whether the allegations of the said Depew, the said Fowler, and the said Hill, or either of them, are or may be true.

Fourth. Whether the main allegation of this, your petitioner, is true; and,

Fifth. Whether Christianity or a Christian civilization, a free Democracy or free men, all or either of them, are possible under or in daily contact with the conditions which they shall find to prevail.

The said commission shall also investigate and determine:

First. Whether a propaganda exists, participated in by any of the officers or employees of the United States, particularly of the Treasury, including the Mint, for perpetuating any plan, policy, system, or method of creating (making) or issuing money or coin, or for regulating or controlling the value of the same, or of any standard or unit thereof; and, if so, the character and extent of the said propaganda, and the person, persons, or government, foreign or domestic, responsible therefor.

Second. Whether our information, or knowledge, current in our public libraries and through the press of the country concerning certain monetary practices of our own and foreign countries involving paper money issues (such as are known, for example, as the French assignats, and the Pennsylvania paper currency of 1723, and subsequently, as well as what have come to be known as colonial emissions) may be relied on in weighing and determining the character of such paper issues; also, the true character of those paper money issues, together with their effect upon commodity values and upon the societies issuing or emitting them.

Third. Whether the soil, from which man ever has and ever must call forth sustenance for his body, is not a safer, better, and cheaper guarantor of the stability of values in either money or commodities than any of the inert substances hidden in the earth; or than banks that may happen to be permitted by statute to acquire, temporarily,

the title to "all of the consumable commodities" in this country, or even on the whole earth, for no other or greater service to mankind than the performance of a duty imposed upon government to supply the producers of wealth with an acceptable means for the exchange of the products of their labor.

Fourth. Whether gold and silver metals, or either of them, by any form of legerdemain can be made the equivalent of wealth in bread and meat.

Whether any metallic substance, so-called, by any legislation by czar, king, potentate, power, congress, man, or people heretofore or now known on earth ever has, or ever can be made the equivalent of labor or service, by man, woman, or child except in fraud of the rights of the child to life, liberty, and the untrammelled pursuit of happiness.

Fifth. Whether in the one hundred and thirty-one years since their Declaration of Independence the people of these United States have become free and independent of the only power now on the earth against which their eternal vigilance alone offers any security whatever from those tyrannies of caste, or of race, or of ambition, or of avarice, or of superstition, or of intolerance, or of bigotry which, arrayed under a single banner, to-day constitute the anti-Christ foretold of old; against which money, or any medium in which we may effect an exchange of the products of our labor, may be effectively employed only when it is free and responsive to the requirements of the man promised by God through his prophet Isaiah, when he said, "I will make a man more precious than fine gold, even a man than the golden wedge of Ophir."

Sixth. Whether values reside in things, and hence whether it is possible to create a measure, a standard, or a unit of anything outside the human mind that is not itself abstract, arbitrary and fixed, like the figure 1, the pound weight, or the yardstick—whatever concrete representative may be employed for the figure 1, as an apple—or, for the pound, as a pound weight—or, for the yardstick, as something a yard in length. The apple will always be an apple, however its value may fluctuate; the pound weight always a pound weight, the yardstick always a yardstick, however the sugar or the cloth may vary in quality, or in value, or in price.

Seventh. Whether the present price of silver is due to depreciation in the value of that metal in the arts, or to the restrictions upon its coinage; and whether the present price of gold bullion could be maintained, if the coinage of that metal were discontinued by statute.

Eighth. Whether, since by common consent, approved by statute, we first came to the use of metals for money, then to the use of gold alone as "basic" or "real" money (discarding all other commodities for gold, "which differs in none of its economic aspects from other commodities subject to the same laws of value") and, since "surplus wealth, the division of labor, the world market, and the credit system" distinguish our modern civilization "from those of the earlier and ruder ages" by going one step farther and discarding gold for something having no commodity value, we may not thereby distinguish our own generation, our own country, and our own civilization from the economic cannibalism of the past. And, finally,

Ninth. Whether, since both ancient and modern economic authorities agree "that the first historical uses of gold and silver were as treasure," for personal ornament, "a hoard being kept as a public fund

to support warlike attack or defense;" because "easy to hide and to carry in flight," at a time when "individual ownership of land was rare, and dispossession was easy by force of arms," the time has not at last arrived when we may wisely discard our own similar practices for one designed in the interest of mankind, and intended to place "Every child in a garden—every mother in a homecraft—with individual industrial independence for every worker in a home of his own on the land."

A NEW SYSTEM OF MONEY.

If the commission find that all or any of the material allegations of the President, the said Lawson, Hill, Fowler, and Depew, and the main allegation of this petitioner are true; and, also, that the testimony of Doctor Franklin, touching the Pennsylvania currency of colonial times, is true, they shall report their findings to Congress not later than January, 1909, together with all information gathered by them upon the subject of money; and also a plan, or bill, for an act providing for a new system of banking and currency for the United States.

A system of banks and banking that shall not be able to serve the interests of the banks, nor of its stockholders, until after the public shall have been served; and providing for a currency that will respond at all times and under all conditions to the sacred law of demand and supply.

A system of national currency having no other authority for being than the good faith and credit of the United States; but which shall be a lien in law and in equity against all of the property of these States, both public and private.

Shall never be created or issued by any other authority than the United States, or for or to any person, corporation, or State, but on application therefor, accompanied by such guaranty as the United States may require for the payment of any tax for its use necessary for the support of government.

And the said new national currency shall not be redeemable, except as we now redeem gold coin, viz, in honest service in the form of goods, wares, and merchandise. And the said money shall be a full legal tender, shall pass current as such, shall have no limit, shall bear no interest, shall be printed or stamped on paper, and shall be known as United States money.

A NEW DECLARATION OF INDEPENDENCE.

The said commission shall also formulate a new declaration of independence, in substance as follows:

These United States are, and of right ought to be, free and independent; they are absolved from all allegiance express or implied to the money standards, money units, money theories, and money of Great Britain and the rest of the world, pagan and Christian, and all commercial and monetary relations between themselves and the several States of Europe are, and of right ought to be, suspended until such time as the freedom and independence of these States, with all power over money within their jurisdiction, shall be recognized and established by Great Britain and other States in Europe.

And the said commission shall have all necessary power to compel the attendance of witnesses, and to obtain possession of books, documents, and papers for their inspection and use as they may require from time to time, it being the true intent and purpose to endow them with all those powers of sovereignty which a free people may safely confide to their high court of last resort, in order that they may be fully equipped for the high duties put upon them.

MALIGNANT DISORDERS REQUIRE RADICAL TREATMENT.

Sirs, shall we shirk this proposition? Will we be permitted to? Are we not already arrayed and in arms against the outposts of the "gold standard?" The return to his wallow of a recruit here and there can not affect the issue. They mistook the skirmish for the battle. Others may mistake the battle for the campaign, and others still the campaign for the cause. But the proposition will remain, and no one will be permitted to mistake the result. When that arrives it will be found that the earlier deserters mistook the cause, which is not one of banking at all, but of government; not one of reform, but of change; not one of medicine, but of surgery.

Besides, sirs, upon mature reflection, you must see that the operation proposed is not one of "resistance to constituted authority," to king and country, but to usurpers and rebels, to enemies of law and authority, who, masquerading in international uniform, affect a virtue that betrays their character and works a forfeiture of their claims for "money good in Europe," while using it solely "for the profit of the bank," to the shame of their own countrymen and the betrayal of their liberties.

Sirs, comparing this deferred declaration with its model, you will see that not only is its tone conservative to gentleness, but confidently clings to a faith that is sublime in the possible reformation of Europe to the ideals and aspirations of the American people, and refuses to suspend existing relations with the Orient. So that a single purpose is apparent in each and every line of it, viz, self-preservation.

AT ISSUE WITH A TRUST.

Sirs, the night riders of Kentucky, who, to again quote Mr. Depew, were "on the other side of the market," have won in their fight with the tobacco trust. One hundred such men in each of the States of the Mississippi deltas, could, if they would, compel submission to their demands from every transportation line crossing the continent in either direction.

In such an event what would become of Mr. Aldrich's "emergency currency," based on any kind of railway, or municipal bonds; or even on the gold in our bank reserves?

Or the Fowler currency, and its "zones" of bank directorates, with their power to increase bank issues limited only by the "necessities of the crisis?"

Or even of our gold hoards in national and bank vaults? Would it be paid out to "redeem" those new issues, or might not a deferred "clearing house" be devised for them?

Sirs, the truth is, that the time has come when the people who supply the freight suspect that those who supply the transportation may

as well own the land itself as the privilege of fixing the market price of the produce of the land. And since the only thing still wanting for the accomplishment of such a design is the undisturbed continuance of the "gold standard" of values for another year or two, or until the money supply, the transportation, manufacturing, and mining supply, can pool their profits on anything like a "fair basis," the passage of either the Aldrich stalking horse, the Williams nation behind the banks' bill, or the Fowler confidence restorer will do; so that confidence—or in this case credulity—be again restored.

SUMMARY.

Sirs, your petitioner avers that his own experience and observation of many years have convinced him that gold is the most treacherous and costly of our metals—costing at least two dollars for every one dollar's worth of bullion from the smelter—and that the prospecting and mining for it generates and encourages a spirit of gambling incident to no other industry.

He also firmly believes that the gambling spirit, so open and flagrant in all our modern markets, is directly traceable to our metallic money.

That this spirit will continue to infest our markets and radiate evil from them to the sources of our market supplies; infest our religious, industrial, and political institutions, corrupt and eventually overwhelm them unless we hasten to remove the cause, which, exactly like Mr. Depew's pyramid on its apex, prospers in the ratio of our "credit money" to gold, I need not undertake to prove to living daily witnesses of the Babylonish practices of our so-called "smart set" in every center of population, from our great commercial marts to the smallest of our freshly discovered gold-mining camps.

A DEFENSE OF THE FATHERS.

Sirs, who among us all now dare say that if our fathers could have foreknown the awful cost of that form of chattel slavery which they bequeathed to us they would ever have done it? And can we possibly think otherwise concerning this other form of servitude, our chains to metallic money, had they have had the power to see as we now see?

How shall we justify to our posterity the failure of democracy in the face of our responsibility when, in a free country where public instruction is universal, they find that there is not in all the land a school sustained either by the States or the nation where the simplest truths about money are taught. Will they accept our plea that, knowing nothing at all of the philosophy of money ourselves we yet knew all there is to know about banking and accepted the theories and practices of bankers for truth? Or will we leave them to conclude that, as of a taint in the blood, the truth must not be known about money for fear of "disturbing business" and "halting prosperity;" in fear that the people in their wrath might tear down the whole brazen structure, along with the world-wide graft generated by the error that some one commodity is fitted by nature to justly represent all of the others and determine their value for our uses. And—

That other error, which teaches the producer of all wealth to rely upon those who produce nothing, for the means of exchanging the products of his labor.

In other words, a fundamental error requiring a man made in the image of the Creator of all to nullify the Divine order by first acquiring the requisite knowledge to production, then producing by the sweat of his own brow the bread and meat necessary for his own subsistence and enough more for the subsistence of the man who not only will not produce, but insists on compensation for not doing so.

In still other terms, a human frailty, which requires a farmer in these United States in the twentieth century after Christ to pay his Representatives in Congress to vote to pay a national banker to loan him (the farmer) for pay the tools of exchange necessary to enable him to produce from his own land the surplus necessary for the subsistence of the banker.

Or, in still other words, an insane delusion that gold, found by chance, at a cost greater than its valuation by statute, is the only thing in all the world "fit for a bank reserve"—a reserve designed to acquire the "confidence" of the farmer in the "promise" of the banker to take care of any of the left over surplus product of the farm.

Errors so hoary old that every attempt to eradicate them from practice but reminds us of the rule in sanitation: That we should not be deterred from applying disinfectants because of the foul odors arising from a cesspool.

CONCLUSION.

Sirs, your petitioner has no desire to shirk any part of his duty, nor to disguise any part of his purpose in addressing you to point out a way whereby mankind may, when and how they will, get rid of inherited economic errors.

To get rid of paying interest, for the use of that which we ourselves create.

Of all indirect taxes such as a tariff on foreign or domestic manufactures.

Of barter in exchange, by dispensing with commodity money.

Of all forms of gambling in the sweat, or in the reward of honest toil.

To take from money every temptation to traffic in it, or to hoard it for wars of conquest, or of defense.

To make one dollar as good as another, all dollars free, and each and every one the exact equivalent of a dollar's worth of service.

To compel Congress to obey our Constitution and distribute the money they create directly to those who may need it in their business.

To release commerce and industry from the thrall of an intermediary, equipped by our Government, who exacts from every worker his surplus; for the usurers' profit in effecting an exchange of the products of labor.

To make it plain, that man himself is alone responsible for the economic chains that bind him, and that if he would be free indeed, he must himself break them. By enslaving the stranger? No. By enslaving his neighbor? No, no! By cunning, fraud, or force? No, no, no! He can only do it by claiming more than his own, and taking that.

In other words, we can only free ourselves from the barbarism that environs us by coming further out of it into the light of Christianity; electing a Congress and a President who will take our Government

from under our present banking system by restricting banks to legitimate banking; issuing all money directly to the applicant for it who will furnish ample productive real estate security for the payment of an annual tax for its use adequate to the support of government, and permit him to keep it so long as he is able to employ it in industrial development at a profit in dividends sufficient for his own maintenance and his share in the support of government.

Sirs, in the deliberate judgment of your petitioner, this would put both the banks and the nation behind the man; would keep money busy—since there would be nothing else for it to do—thus transferring from all industry and enterprise to man's silent, uncomplaining, and obedient auxiliary that share of the business of the world which, from the beginning, has been able to escape the "primal curse" by hiding in temples reared by our own fears, our superstitions, or our cupidity, where it has fattened on our voluntary offerings and sacrifices.

Would draw the line sharply and distinctly between value, utility, and price.

Would dignify and exalt agriculture to its rightful place;

Would win from their false ideals the fast swelling tide from our fields to our cities, reverse the tide, and dissolve it;

Restore our forests;

Reclaim our arid plains;

Induce the roses to bloom on our desert wastes.

Nay, sirs! More and yet more!

Freed from this last of his shackles, the genius of man will find a way to unite all America—to develop its many thousand miles of sea-coast harbors, still-water channels, and inland waterways.

But above and beyond all these, mere human activities, man will be able to realize his own redemption. When, with "A new song in his mouth; a song of joy and gladness," the new man now coming into view—the righteous man foretold by the prophets—will "replenish the earth and subdue it".

A. T. MORGAN.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 472.

ESTIMATES FOR ADDITIONAL LIGHT-HOUSES, ETC.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE SECRETARY OF COMMERCE AND LABOR SUBMITTING ESTIMATES OF APPROPRIATIONS FOR ADDITIONAL LIGHT-HOUSES AND OTHER PUBLIC WORKS IN THE LIGHT-HOUSE ESTABLISHMENT AGGREGATING $940,325.

MAY 13, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 13, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of Commerce and Labor, of the 13th instant, submitting estimates of appropriations for additional light-houses and other public works in the Light-House Establishment aggregrating $940,325, authorized by an act recently passed by both Houses of Congress and now before the President for approval.

Respectfully, GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, May 13, 1908.

SIR: I hand you herewith estimates for public works in the Light-House Establishment, aggregating $940,325, which I will thank you to transmit to the Congress.

The estimates are for appropriations to carry into effect work authorized by a bill for additional light-houses and other public works

in the Light-House Establishment, which recently passed both Houses of Congress, and is now before the President for approval.

I suggest that if possible these estimates be submitted so as to be added to the sundry civil bill now pending in the Senate as an amendment to that bill.

I have the honor to be, sir, your obedient servant,

OSCAR S. STRAUS, *Secretary.*

Hon. GEO. B. CORTELYOU,
Secretary of the Treasury.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Department of Commerce and Labor.

Detailed objects of expenditures, and explanations.	Date of acts, resolutions, or treaties authorizing or providing for the expenditures.	References to Statutes at Large or to Revised Statutes. Vol. or R. S.	Page.	Sec.	Total amount to be appropriated under each head of appropriation.
DEPARTMENT OF COMMERCE AND LABOR.					
LIGHT-HOUSE ESTABLISHMENT.					
(For the increase of an appropriation already asked, by reason of additional expenditures authorized to be made therefrom.)					
Salaries of keepers of light-houses, 1909— For salaries, fuel, rations, rent of quarters where necessary, and all other necessary incidental expenses of not exceeding 1,650 light-house and fog-signal keepers and laborers attending other lights. Amount appropriated for the current fiscal year ending June 30, 1908, $950,000.	Mar. 4, 1907 May —, 1908	34	1320	1	$180,675
NOTE.—By section 9 of the act approved May —, 1908, it was provided "that every light-house keeper and assistant light-house keeper in the Light-House Establishment of the United States shall be entitled to receive one ration per day or, in the discretion of the Light-House Board, commutation therefor at the rate of thirty cents per ration." $180,675 (additional). This amount is required in addition to the $1,000,000 under this title of appropriation in the sundry civil bill making appropriations for the fiscal year 1909 as it passed the House of Representatives. This amount represents the estimated cost of commuted rations for not exceeding 1,650 light-house keepers, at 30 cents per ration, three hundred and sixty-five days in the year.					
Oil houses, Light-House Establishment— For the construction and establishment at such places as shall, in the opinion of the Light-House Board, be for the best interests of the Light-House Service, 2 oil houses, at a cost not to exceed $1,500 for each one.	May —, 1908	.....	.....	.....	3,000
Total Light-House Establishment	.....	.....	.....	.....	183,675
LIGHT-HOUSES, BEACONS, AND FOG SIGNALS.					
FIRST DISTRICT.					
Tender for First light-house district— A tender for use in the First light-house district and elsewhere, as may be directed.	May —, 1908	.....	.....	.....	200,000
THIRD DISTRICT.					
Negro Point light-station, New York— A light and fog-signal station, at or near Negro Point, on Wards Island, Hell Gate, East River, New York.	May —, 1908	.....	.....	.....	10,000

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Department of Commerce and Labor—Continued.

Detailed objects of expenditures, and explanations.	Date of acts, resolutions, or treaties authorizing or providing for the expenditures.	References to Statutes at Large or to Revised Statutes. Vol. or R. S.	Page.	Sec.	Total amount to be appropriated under each head of appropriation.
DEPARTMENT OF COMMERCE AND LABOR—Con.					
LIGHT-HOUSES, BEACONS, AND FOG SIGNALS—Cont'd.					
THIRD DISTRICT—continued.					
Point Judith lighted buoy, Rhode Island—					
A light and signal or whistling buoy, fitted with submarine bell, off Point Judith, Rhode Island	May —, 1908	.....	.....	.....	$9,000
Greenville lighted buoy, New Jersey—					
A light and signal or whistling buoy, fitted with submarine bell, to be placed at or near the entrance to the dredged channel at Greenville, N. J., in New York Bay.	....do	.....	.....	.....	9,000
Staten Island light-house depot, New York—					
Spar shop	....do	.....	.....	.....	3,000
Dump scow	....do	.....	.....	.....	7,500
San Juan light-house depot, Porto Rico—					
A storehouse and dock at San Juan, P. R.	....do	.....	.....	.....	15,000
FOURTH DISTRICT.					
Elbow of Cross Ledge light-station, New Jersey—					
To complete station	Apr. 28, 1904 May —, 1908	34	647	1	21,500
Schooner Ledge light-station, Delaware—					
For removal and reestablishment of front and rear lights.	May —, 1908	.....	.....	.....	10,650
Delaware River range lights, New Jersey—					
For completing the reestablishment of Reedy Island range lights	Mar. 3, 1901 June 28, 1902 May —, 1908	31 32	1138 430	1 1	25,000
Goose Island Flats temporary light, Delaware River—					
For establishing a temporary light	May —, 1908	.....	.....	.....	15,000
Delaware River post lights—					
For establishing post lights on the Delaware River between Bordentown and Trenton, N. J.	....do	.....	.....	.....	500
FIFTH DISTRICT.					
Lighted buoys, Fifth light-house district—					
For light and signal or whistling buoys, each fitted with a submarine bell, as follows: One buoy to be placed off Cape Henry; one buoy to be placed to the northward of the Middle Ground at the entrance to Chesapeake Bay; and one relief buoy.	May —, 1908	.....	.....	.....	27,000
Lower Broad Creek light, North Carolina—					
For establishing a light at or near the mouth of Lower Broad Creek, North Carolina.	....do	.....	.....	.....	500
Ragged Point light-station, Potomac River—					
For completing station	June 30, 1906 Mar. 4, 1907 May —, 1908	34 34	659 1317	1 1	5,000
SIXTH DISTRICT.					
Tender for Sixth light-house district—					
A tender for the use of the engineer of the Sixth light-house district and elsewhere, as may be directed.	May —, 1908	.....	.....	.....	30,000
Lighted buoys, Sixth light-house district—					
A light and signal or whistling buoy, to be placed off the entrance to St. Johns River, Florida, and a relief buoy for same.	....do	.....	.....	.....	18,000
EIGHTH DISTRICT.					
Sabine Pass Jetty light station, Louisiana and Texas—					
A light and fog-signal station at or near the end of Sabine Pass Jetty.	May —, 1908	.....	.....	.....	40,000
Galveston Jetty light station, Texas—					
To complete station	June 11, 1896 May —, 1908	29	417	1	10,000
Fort San Jacinto light-house depot, Texas—					
A buoy wharf and depot shed at Fort San Jacinto, Tex., Military Reservation, Galveston Harbor.	May —, 1908	.....	.....	.....	10,000

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Department of Commerce and Labor—Continued.

Detailed objects of expenditures, and explanations.	Date of acts, resolutions, or treaties authorizing or providing for the expenditures.	References to Statutes at Large or to Revised Statutes.			Total amount to be appropriated under each head of appropriation.
		Vol. or R. S.	Page.	Sec.	
DEPARTMENT OF COMMERCE AND LABOR—Con.					
LIGHT-HOUSES, BEACONS, AND FOG-SIGNALS—Cont'd.					
NINTH DISTRICT.					
Milwaukee light vessel, Wisconsin— For constructing, equipping, and outfitting complete for service a light vessel with a fog signal.	May —, 1908				$75,000
Grand Point au Sable light station, Michigan— For a first-class compressed-air siren and building therefor.	....do				11,000
TENTH DISTRICT.					
Cleveland pierhead lights, Ohio— For establishing a light station at each of the east and west breakwater pierheads, entrance to Cleveland Harbor, Ohio.	May —, 1908				45,000
ELEVENTH DISTRICT.					
Relief light vessel for Ninth and Eleventh light-house districts— For completing	Mar. 3, 1903 May —, 1908	32	1093	1	20,000
Apostle Group light station, Michigan— For survey and estimate of cost and report upon the feasibility and need of establishing a light and fog signal on Gull Island, or the easterly end of Michigan Island, Apostle Group, and determining whether, when said station is established, the existing station on the westerly end of Michigan Island can be safely closed.	May —, 1908				2,000
TWELFTH DISTRICT.					
Four Mile Creek light station, California— For the establishment of a light and fog-signal station at or near Four Mile Creek, near Punta Gorda, Cal.	May —, 1908				60,000
Kauai Island light station, Hawaiian Islands— For a light and fog-signal station at some point on the northerly or westerly coast of Kauai Island.	....do				75,000
THIRTEENTH DISTRICT.					
Orford Reef, Oregon— For defraying the expenses of a survey and estimating the cost and reporting upon the feasibility and need of establishing a light vessel or light station at or near Orford Reef, off Cape Blanco, Oregon.	May —, 1908				2,000
Total Light-Houses, Beacons, and Fog Signals					756,650
Total under Light-House Establishment					940,325

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 473.

ESTIMATE OF REAPPROPRIATION FOR FURNISHING NEW FREEDMEN'S HOSPITAL BUILDING.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE SECRETARY OF THE INTERIOR, SUBMITTING AN ESTIMATE OF REAPPROPRIATION OF THE UNEXPENDED BALANCE OF THE APPROPRIATION FOR FURNISHING THE NEW FREEDMEN'S HOSPITAL BUILDING, MADE BY THE SUNDRY CIVIL APPROPRIATION ACT OF MARCH 4, 1907, THE SAME TO REMAIN AVAILABLE UNTIL EXPENDED.

MAY 13, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 12, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of the Interior, of the 11th instant, submitting an estimate of reappropriation of the unexpended balance of the appropriation for furnishing new building, Freedmen's Hospital, made by the sundry civil appropriation act of March 4, 1907, the same to remain available until expended.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, May 11, 1908.

SIR: In the act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1908, and for other purposes, approved March 4, 1907, appropriation is made, among

other things, for furniture for the new Freedmen's Hospital building in the following terms, to wit:

For furniture, including operating tables, instrument tables, shelf stands, wheel stretchers, irrigating stands, sterilizers, aseptic cabinets, instrument cabinets, autopsy table, morgue refrigerators, stable fittings, tables, chairs, brushes, beds, couches, bureaus, stands, mattresses, bed linen, desks, rugs, shades, awnings, screens, window guards, surgical instruments, operating and ward utensils; in all, thirty-one thousand eight hundred and twenty-seven dollars, to be immediately available.

Considerable of the furniture provided for in this paragraph has already been furnished and installed in the new building, and contracts have been made for the delivery of other parts thereof; but it will not be practicable to expend any portion of the appropriation for stable fittings and furniture for the morgue before the end of the fiscal year, when this appropriation lapses, as the building heretofore used for these purposes was recently destroyed by fire.

In the pending sundry civil bill, Congress makes an appropriation of $15,000 for stable and morgue, and in order that this may be properly provided with furniture, fittings, etc., I have to request that a paragraph be inserted in said bill providing substantially as follows:

The unexpended balance of the appropriation for furniture for the new Freedmen's Hospital building made in the sundry civil act of March 4, 1907, is hereby reappropriated and made available until expended.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The SECRETARY OF THE TREASURY.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 474.

ESTIMATE FOR EXPENSES OF MAKING PETROLEUM TESTS AND OF MEETING OF INTERNATIONAL COMMISSION FOR STANDARDIZATION OF METHODS OF TESTING PETROLEUM.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ACTING SECRETARY OF THE INTERIOR SUBMITTING AN ESTIMATE OF APPROPRIATION FOR EXPENSES OF MAKING PETROLEUM TESTS AND OF MEETING OF INTERNATIONAL COMMISSION FOR STANDARDIZING OF METHODS OF TESTING PETROLEUM, ETC.

MAY 13, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 11, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Acting Secretary of the Interior, of this date, submitting an estimate of appropriation for expenses of making petroleum tests and of meeting of international commission for standardizing of methods of testing petroleum, etc., $10,000.

Respectfully,

J. B. REYNOLDS,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, May 11, 1908.

SIR: I have the honor to transmit herewith an estimate for an appropriation of $10,000—

To enable the Secretary of the Interior to defray the expenses of making petroleum tests and of a meeting of an international commission for the standardization of methods of testing petroleum and its products.

The estimate above referred to has my approval, and is respectfully forwarded through your Department for the appropriate action of the Congress.

I have to request that the same be transmitted to Congress immediately.

Respectfully,

FRANK PIERCE,
Acting Secretary.

The SECRETARY OF THE TREASURY.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Department of the Interior (U. S. Geological Survey).

DEPARTMENT OF THE INTERIOR.

GEOLOGICAL SURVEY.

Expenses of making petroleum tests and of meeting of international commission for standardization of methods of testing petroleum, etc.—

To enable the Secretary of the Interior to defray the expenses of making petroleum tests and of a meeting of an international commission for the standardization of methods of testing petroleum and its products (submitted) $10,000

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 475.

MEMORIAL FROM CHOCTAW NATION PROTESTING AGAINST REOPENING OF TRIBAL ROLLS.

Mr. CURTIS presented the following

MEMORIAL FROM THE CHOCTAW NATION PROTESTING AGAINST THE REOPENING OF THE TRIBAL ROLLS OF SAID NATION.

MAY 13, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

EXECUTIVE OFFICE, CHOCTAW NATION,
Kinta, Okla., May 6, 1908.

DEAR SENATOR: Advices from Washington indicate that Congress is being hard pressed by defeated citizenship applicants and their attorneys to have the tribal rolls reopened.

As principal chief of the Choctaw tribe of Indians, I desire to record the protest of the Choctaws against reopening the tribal rolls, and I choose this method of doing so.

It is alleged, so I am informed, that error was committed in denying the claims of certain persons to tribal citizenship and enrollment. This is not a strange or unusual allegation, coming, as it does, from the defeated claimants, for most litigants that are unsuccessful in lawsuits of every description claim, and some of them honestly believe, that the courts, to the very highest, erred in deciding against them. But the wisdom and genius of our institutions of government will not permit the setting aside of the judgments of the courts by legislative acts on account of the claims of error or for any other reason. And we think, and respectfully submit, that the same rule should obtain as to the decisions and judgments of other tribunals, though they be quasi judicial in their character.

If the demands of the defeated claimants should be acceded to by Congress and the tribal rolls reopened, such action would amount to undoing the whole work of the Government in investigating and adjudicating the thousands and thousands of cases in tribal citizenship, which work covered a period of more than ten years' time and was done at a cost to the Government of hundreds of thousands of dollars, besides costing the Choctaw and Chickasaw tribes alone over $1,000,000 in fees and expenses to resist the claims of fraudulent applicants for citizenship. We submit, therefore, that Congress should without the slightest hesitation refuse to undo or disturb the work of the Government, completed at so great a cost of time, labor, and money.

It is said that the attorneys for the claimants, notably Mr. Webster Ballinger, has made some startling charges against the commission that heard and determined these cases. But surely so great a body as the Congress of the United States, composed, as it is, of so many lawyers of ability and experience, will not accept a mere charge of irregularity, or even of fraud, as being sufficient for any purpose until proved and established beyond legal doubt. That has not been done. I do not believe that such charges as have been made can be proved in whole or in part, for I do not believe they are true.

If Congress should accept as true the fraud charges that have been made against the officers of the Government in tribal citizenship matters, then the taint of fraud would run through their entire work and the whole of it would have to be set aside, for "false in one thing, false in all." Certainly it would not be right to say that on account of the fraudulent character of the commission that decided the cases the claimants shall not be affected by its decisions, but that the tribes shall be bound by the decisions of such commission. Therefore, if the defeated claimants are going to be permitted to come in and again contest their claims to citizenship because of an allegation that the commission was a fraudulent body, then we would have a right to insist that upon the charges as already made and accepted to be true the tribes be permitted to again contest the enrollment of all those on the rolls whom we believe to be not entitled to enrollment. In other words, it would not be fair to close the rolls against the right of the tribes to contest and at the same time open the rolls as to the claimants, for the tribes have as many rights in these matters as the claimants, and we hope that fact will not be overlooked.

Thus it must be plain to anyone who will consider the matter for a moment that the tribal rolls can not be reopened with fairness to all parties, to the tribes as well as to the claimants, without undoing the whole work of the Government for the past ten years and more and doing the whole thing over again. I feel sure that no Senator or Congressman who has any knowledge of the extent of the work that has been done by the Government in its earnest and honest endeavor to settle the citizenship matters of the tribes will ever consent that that work shall be undone or disturbed, but will insist that the rolls shall remain closed. The settlement of citizenship matters in the Five Civilized Tribes, and especially that of the Choctaws and Chickasaws, was without doubt the most vexatious Indian question that ever came before Congress, and having been settled I apprehend that it will be the decision of Congress to let it remain settled. Unsuccessful claimants, through their attorneys, constantly appeared before the committees of Congress and asked that the law be so liberalized as to give them a chance to prove up their rights, or, rather, what turned out to be shadowy claims to right. Congress was always willing to give each and every claimant a chance to prove up his right, if any he had, to tribal citizenship, and consequently the demands of claimants were usually granted, as is evidenced by the direction to the citizenship court to so try the cases as "to determine the very right of the controversy." Notwithstanding the extreme liberality of the law and its procedure relating to citizenship matters, a great many claimants, including those now shouting fraud, failed to prove their claims to tribal citizenship rights, and their applications for enrollment were denied, and very properly so. If a retrial was given each and every

one of these complaining parties, and if they were again unsuccessful, as would surely be the result of a fair trial, they would again appear before Congress shouting fraud louder than ever. That class of people would not be satisfied with any adjudication of their claims that did not result in their enrollment, regardless of the merits of the cases.

It is said that many of the claimants have contracted with lawyers to give them 50 per cent of what may come to them as a result of their enrollment. This remarkably liberal fee attracts the enterprising lawyers, and thus a new element is brought into the case, interest therein is revived, and appeals to Congress are renewed with increased vigor, but with all that, the merit, or more correctly speaking, the lack of merit, in the respective cases remains the same, and is not changed so much as one iota by the even "whack-up" deal between the claimant and his lawyer, the increase, if any, is in noise only. It will not do to assume, however, because of the increased volume of noise, which comes upon a promise of increased compensation, that the United States Congresses for the last decade and more have done nothing but legislate mistakes and injustices against the defeated citizenship claimants. And we rely upon Congress' faith in its own acts to rebuke the sensational charges that are made, but not proved, against the officers of the Government.

Before closing I desire to say, in order that I may be fully understood, that it is my candid belief that some few persons were left off the rolls under strict operation of the law who were, as a matter of fact, entitled to enrollment. But in cases of this kind it is safe to say that in each and every case the fault was with the applicant and not with the law or the authorities deciding the cases under the law. To instance a few cases as illustrating how this condition might arise: The law of June 10, 1896, provided that any person claiming right to tribal citizenship may apply to the Commission to the Five Civilized Tribes for admission to citizenship, and that the Commission should within a given time (ninety days) decide the case of the applicant, and that either party (meaning the applicant or the tribe) feeling aggrieved at the decision of the Commission may appeal to the United States court. Some few persons, recognized citizens by blood and others by intermarriage, applied to the Commission to the Five Civilized Tribes for admission to citizenship, but failed to make the required proof under the law, and their applications were denied and they failed to take an appeal to the United States court, as required by law. So when the Commission came to prepare the rolls, this class of persons, having been denied and having failed to take the required appeal to the courts, where their rights might have been saved, of course, had no status as citizens and could not therefore be enrolled under the law.

Another instance of a similar kind, the law of July 1, 1902, commonly known and referred to as the Choctaw-Chickasaw supplementary agreement, provided, among other things, that after decision by the court (the citizenship court) upon two test questions by the same law submitted to said citizenship court for decision, if such decision should be against the interest of the applicants, or any of them, such applicants may appeal their cases to the same court and have them tried upon the facts without prejudice and determined according to the very right of the controversy. The decision of the citizenship court was, upon the test questions submitted, against the validity of the judgments of the United States courts. Just here I might explain what

is meant by the "test questions." The United States courts had decided these appeal cases against only one of the tribes in interest—sometimes against the Choctaw Nation only, and in other cases against the Chickasaw Nation only, but in no case against the Choctaw and Chickasaw nations jointly.

It was contended by the tribes that, inasmuch as they were jointly interested, a judgment against one of the tribes or nations and not against the other was void for lack of sufficient parties. The other test question was: The law of June 10, 1896, provided that cases might be appealed from the decision of the Commission to the Five Civilized Tribes to the United States court. The courts, instead of trying these cases as other appealed cases, tried them de novo. The tribes contended that the courts had no right to try them de novo, and that their doing so invalidated the judgments. These two questions were submitted to the citizenship court by the act of Congress of July 1, 1902, supra, and are the "test questions" herein referred to. The citizenship court decided in favor of the contention of the tribes, and held the judgments of the United States courts to be void. Some persons, recognized citizens by blood and others by intermarriage, had been adjudged citizens of the tribe by the United States court. These judgments were, as above stated, declared void by the citizenship court, and these particular citizens failed to take the appeal required by law to save their rights, were consequently left without a status as citizens, and could not, therefore, be enrolled under the law.

In both the instances above referred to the fault was clearly with the applicants in not taking the appeals required by the law, and was not with the law or the authorities deciding the cases under the law.

As before stated, I believe that some persons who were, as a matter of fact, entitled to enrollment were left off the rolls under the strict operation of the law; and personally I would like to see these people restored to their full tribal rights, if any way could be devised whereby the "wheat could be separated from the chaff," and these people enrolled without opening up the rolls to the great horde of applicants who never had any tribal status or any rights as such. It must be remembered that not all persons who failed to take appeals are, as a matter of fact, entitled to enrollment. There are probably many in that situation, and among the many who are not entitled under either law or fact are to be found a few bona fide Indians and intermarried citizens who should, I think, be enrolled if it can be done without opening up the rolls to the many that are not entitled. I want to say, further, that the people that I speak of are in no wise representative of that class that claims to be thousands in numbers and who are shouting "fraud" against everyone where they think it will avail them anything in their frantic efforts to get on the tribal rolls.

In conclusion, will say that the tribes are not altogether satisfied with the rolls as finally prepared, for we believe that there are many on those rolls who should not be there, yet we do not charge that fraud was practiced by the officials in admitting them to citizenship or enrollment, but we believe it was due to error honestly made. However, for the sake of getting these matters finally closed up, and realizing the utter futility of any effort that could be made to close the rolls so as to be satisfactory to everybody, we are willing to accept as final the rolls as now made up, though they may contain slight imperfections.

The history of the tribal citizenship litigation that covered a period of ten years and more, is probably unparalleled for the shocking and shameful frauds that were practiced by claimants and their witnesses in an effort to get on the tribal rolls. For the slightest inducements witnesses could be procured who would swear anything they were requested to; in fact, the idea seemed to prevail that the Indians' property was legitimate prey, and that the rules of common honesty should be no bar to an effort to get hold of it. Now that claimants should be charging fraud looks like a huge burlesque.

Barring the few cases which I have here cited, and with the exception of those who are improperly on the rolls, it is our belief that substantial justice has been done in the matter of the rolls, and we appeal to Congress to let the rolls remain closed, and thereby save the tribes from further injustice at the hands of the unsuccessful citizenship claimants.

Very respectfully,

GREEN MCCURTAIN,
Principal Chief, Choctaw Nation.

Hon. CHARLES CURTIS,
United States Senate, Washington, D. C.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 476.

WILLIAM W. DEWHURST, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF WILLIAM W. DEWHURST, AS ADMINISTRATOR WITH THE WILL ANNEXED OF GEORGE DEWHURST, DECEASED, AGAINST THE UNITED STATES.

MAY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional cases Nos. 12754 and 10942-148 C. & F. consolidated. William W. Dewhurst, as administrator with the will annexed of George Dewhurst, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's testator was serving as an officer in the Navy of the United States, to wit, as acting master, upon receiving and other ships belonging to said Navy, was transmitted to the court by Senate resolution No. 251 of the 4th day of June, A. D. 1902, referring Senate bill No. 5949 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to hearing on its merits on the 4th day of May, A. D. 1908.

The claimant sued in person, and the Attorney-General, by W. W. Scott, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant makes substantially the following allegations:

The claim was previously presented to the proper accounting officers of the Treasury Department for settlement and was allowed by such accounting officers under the decision of this court and of the Supreme Court in the case of Strong *v.* The United States (125 U. S., 656), the sum then allowed being eight hundred and thirty-one and forty-three one-hundredths dollars ($831.43). This action was reported to Congress by the Secretary of the Treasury in Senate Executive Document No. 211, Fifty-first Con-

gress, first session. In appropriating for said allowance (and others of like character) Congress made the following proviso:

"That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered which, being affirmed by the Supreme Court, has been adopted by the accounting officers as the basis for the allowance of said claims." (Act approved March 2, 1889, 25 Stat. L., 934.)

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong and refused to allow any portion of the claim, as it accrued more than six years prior to July 17, 1886, the date on which the petition of Strong *v.* The United States was filed in the Court of Claims.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which the testator of claimant would have been entitled under the decision in the United States against Strong, had Congress not prohibited the same, was eight hundred and thirty-one and forty-three one-hundredths dollars ($831.43).

Subsequent appropriation statutes have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after full consideration, make the following

FINDINGS OF FACT.

The claimant is a citizen of the United States, and is the duly appointed administrator with the will annexed of the decedent, who was an officer in the Navy thereof, who at the time of his death was a resident in the State of Florida, and said decedent is the identical person whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for, as alleged in the petition.

The amount found due claimant's testator by the accounting officers under said decision was eight hundred and thirty-one and forty-three one-hundredths dollars ($831.43); the amount suspended under the proviso to the act of Congress approved September 30, 1890 (26 Stat., 544), and which still remains unpaid, is eight hundred and thirty-one dollars and forty-three cents ($831.43).

BY THE COURT.

Filed May 11, 1908.
A true copy.
Test this 11th day of May, A. D. 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 477.

HERBERT R. GREEN, ADMINISTRATOR.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF HERBERT R. GREEN, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF NATHANIEL GREEN, DECEASED, AGAINST THE UNITED STATES.

MAY 13, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 12, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13176. Herbert R. Green, administrator de bonis non of the estate of Nathaniel Green, deceased, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for difference between sea pay and shore pay while claimant's decedent was serving as an officer in the Navy of the United States, upon receiving and other ships belonging to the Navy, was transmitted to the court by Senate resolution on the 4th day of June, 1902, referring Senate bill No. 5949 for proceedings and report under the provisions of the act of Congress approved March 3, 1887.

The case was brought to a hearing on its merits on the 4th day of May, 1908.

Herbert R. Green appeared for claimant, and the Attorney-General, by W. W. Scott, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The claimant in his petition makes substantially the following allegations:

That he is the administrator de bonis non of the estate of Nathaniel Green.

This claim was previously presented to the proper accounting officers of the Treasury Department for settlement, and was allowed by such accounting officers under the decision of this court and of the Supreme Court of the United States in the case of Strong *v.* The United States (125 U. S., 656), the sum thus allowed being $479.13. This action was reported to Congress by the Secretary of the Treasury for appropria-

tion. In appropriating for said allowance (and others of like character) Congress made the following proviso:

That no part of any one of the claims to which this appropriation is applicable shall be paid therefrom which accrued more than six years prior to the date of the filing of the petition in the Court of Claims upon which the judgment was rendered, which being affirmed by the Supreme Court has been adopted by the accounting officers as the basis for the allowance of said claim.

Thereafter, pursuant to said proviso, the accounting officers readjusted said claim for such difference of pay as the same had been settled under the said decision in United States against Strong and refused to allow that portion which accrued more than six years prior to July 17, 1886, the date on which the petition in the said case of Strong *v.* The United States was filed in the Court of Claims. Upon such readjustment there was found to be due and then paid to claimant out of said appropriation the sum of $78.38, being the amount which accrued subsequent to July 16, 1880, and to which said proviso did not relate.

The accounting officers also found that the difference in pay between that received prior to July 16, 1880, and that to which claimant's decedent would have been entitled under the decision in United States against Armstrong had Congress not prohibited the payment of the same was $400.75.

Subsequent appropriation statutes have contained the same proviso, and the accounting officers of the Treasury, pursuant to said provisions, have continuously refused to allow this and other similar claims, and the same are still unpaid.

The court, upon the evidence and the report of the Treasury Department, and after considering briefs and arguments of counsel on both sides, make the following

FINDINGS OF FACT.

The claimant is a citizen of the United States and a resident of the county Berks, in the State of Pennsylvania, and is the administrator de bonis non of Nathaniel Green, deceased, whose claim under the decision of the Supreme Court of the United States in United States *v.* Strong (125 U. S., 656) was adjusted by the accounting officers, reported to Congress, and appropriated for, as alleged in the petition.

The amount found due claimant by the accounting officers under said decision was $479.13; the amount paid claimant was $78.38; the amount suspended under the proviso to the act of Congress approved March 2, 1889, and which still remains unpaid, is four hundred dollars and seventy-five cents ($400.75).

BY THE COURT.

Filed May 11, 1908.

A true copy of the findings of fact as filed by the court.

Test this 11th day of May, 1908.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 478.

COMPLIANCE OF WESTERN MARYLAND RAILROAD COMPANY WITH COMMODITIES CLAUSE OF AMENDED ACT TO REGULATE COMMERCE.

LETTER FROM THE CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION TRANSMITTING A STATEMENT OF MR. B. F. BUSH, RECEIVER OF THE WESTERN MARYLAND RAILROAD COMPANY, ETC., RELATING TO HIS COMPLIANCE WITH THE SO-CALLED "COMMODITIES CLAUSE" OF THE AMENDED ACT TO REGULATE COMMERCE.

MAY 14, 1908.—Ordered to lie on the table and be printed.

INTERSTATE COMMERCE COMMISSION,
Washington, May 13, 1908.

To the SENATE:

As proposed in its communication of 7th instant, the Interstate Commerce Commission has the honor to transmit herewith the statement of Mr. B. F. Bush, receiver of the Western Maryland Railroad Company, with the documents accompanying the same and referred to therein, relating to his compliance with the so-called "commodities clause" of the amended act to regulate commerce.

Very respectfully,

MARTIN A. KNAPP,
Chairman.

WESTERN MARYLAND RAILROAD COMPANY,
At New York, May 11, 1908.

SIRS: Replying to your communication of 8th instant, with which you inclose copy of your reply of same date to Senate resolution of May 6, 1908, copy of your report to the President, dated March 12, 1908, and copy of letter of William A. Glasgow, jr., esq., to the President, dated March 4, 1908:

The Commission is in error in its understanding, as stated to the Senate, that it is informed by me that, in the operation of the Western Maryland Railroad, I am not complying with the commodity clause of the Hepburn bill. I had no intention of so informing the Commission, and such is not the case, your telephone inquiry having been either misunderstood by me or my reply to your representative at the telephone having been misconstrued.

My purpose was to reply affirmatively to an inquiry whether coal taken from the mines owned by the West Virginia Central and Pittsburg Railway Company (a proprietary company of the Western Maryland Railroad Company) was being transported over the Western Maryland Railroad by the receiver.

The conditions under which coal taken from these mines is being transported over the Western Maryland Railroad under the receivership appears from the order of court included in the documents herewith inclosed.

The coal interests of the Western Maryland Railroad Company, held through ownership of the entire stock of the West Virginia Central and Pittsburg Railway Company, are a part of the security of the Western Maryland mortgage now in foreclosure; and, by order of court in the foreclosure proceedings, these interests have been separated from those of transportation, and the revenues derived from the coal properties, under separate operation and accounts, have been sequestered and specifically appropriated to mortgage indebtedness—equivalent to separate receiverships of the coal and railroad interests under enforcement of the liens on the separate properties pledged for the security of the bondholders.

To the end that you may fully understand the situation of the properties of Western Maryland Railroad Company in this respect as well as the reasons for and causes of the present situation and methods of operation, I hand you copies of the following documents:

(1) Communication of B. F. Bush, president, to the board of directors of Western Maryland Railroad Company, dated March 4, 1908.
(2) Foreclosure bill filed by Bowling Green Trust Company, as trustee of the general lien and convertible mortgage of the railroad company.
(3) Copy of order appointing B. F. Bush receiver, dated March 5, 1908.
(4) Copy of the trustee's petition for the payment of interest, embracing application for order for separate operation of the coal properties and sequestration of revenues therefrom.
(5) Copy of order entered upon the last-mentioned petition.

Other papers and orders in the foreclosure cause, as well as pleadings and orders in the judgment creditors' cause, since instituted, are not deemed pertinent to your present inquiry, but copies of any such will be forwarded if you desire. The undersigned will endeavor to meet fully any further inquiries which you may be pleased to make.

Respectfully,

B. F. BUSH, *Receiver.*

The INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

[Western Maryland Railroad Company. B. F. Bush, president.]

BALTIMORE, *March 4, 1908.*

To the Board of Directors of the Western Maryland Railroad Company:

I have asked for this session of the board in order to lay before it a statement of the important phases of the company's financial and business situation, and to express my own views and recommendations.

The gross revenues of the railway for the six months ended December 31, 1907, increased $540,725.32, or 20.332 per cent, and the net revenues of the company increased $350,176.18, or 30.224 per cent over those of the corresponding period of the last fiscal year, with a resulting surplus over all fixed charges, including the abnormally high cost of temporary loans and renewals.

The company is not confronted with any failure of its revenues to cover its full fixed charges, even including those of the extraordinary character last mentioned, and its business has maintained a steady growth with unmistakable assurance of continued development. It has, however, maturing obligations, arising out of its temporary provisions for capital expenditures, and it must at an early date encounter the problem presented by the commodity clause of the Federal rate law.

The company has been unable to permanently finance improvements, equipment and additions, undertaken in the development of the property and earnings, and since justified in all their results except as their wisdom be now tested by the abnormal conditions of the present money and security markets.

The inability of the company to market securities, of a kind readily marketable when these undertakings were assumed, imposed the necessity of temporary financing. Income, also applied to the same class of expenditures, remains unreimbursed through the sale of capital obligations, with the result that current revenues have been charged with the repayment of the money borrowed for the last matured installments of interest rather than with application to the maturing installment.

Notwithstanding its earnings have been fully adequate the company is thus behindhand for the amount of the next maturing coupons—a situation not unusual where net earnings have been temporarily applied to capital account, but one which becomes most difficult in such a failure of security markets as we now experience.

As you are aware, this company has outstanding loans maturing April 1, 1908, in the amount of $3,776,750, secured by pledge of $5,037,000 of its first mortgage bonds. The market price of these bonds—originally in such excess over the loans as to promise a considerable surplus applicable to the reimbursement of the treasury for capital expenditures—has, notwithstanding steady and substantial increase in the gross and net revenues of the company, shrunk to a level below the face of the loans.

It has now become apparent that the company will be unable to meet these loans or to provide additional collateral to secure their extension. In this situation the company itself will, of course, be unable to borrow the money necessary to meet mortgage interest falling due on the first of April next.

This immediate inability to meet the April interest requirements will affect the first mortgage interest at most to the extent of but a brief delay and, in the view in which I make the subjoined recommendations, not at all. The intrinsic value of the securities held as collateral against the company's loans must, in any event, remain much above the level of their amounts, and with a just solution of the questions under the commodity clause, their market value should be restored.

The general lien and convertible mortgage of the company is in greater degree, and the stock vitally, interested in the preservation of

the coal revenues of the company from the adverse conditions of the commodity clause of the rate bill.

That clause is as follows:

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

The coal properties of this company are rightfully owned and operated under charter of the State of West Virginia, and the transportation and commercial features of the company's coal business have been so conducted that no charge of improper methods or abuse of any character was forthcoming in response to the invitations for complaints extended by the Federal Commission in its protracted investigation of the methods and business of the coal producing and coal carrying roads. The coal properties are a material part of the security for the company's mortgages and the revenues from its coal business can not be sacrificed or seriously diminished without materially affecting income applicable to its junior securities. The law can not be generally observed, in the extreme construction of which it is susceptible, without either a wholesale marketing of coal lands, impracticable except at appalling loss to proprietary and mortgage interests, or a restriction of production to the fuel requirements of the roads, entailing vast loss of revenue to them and inevitable exactions from the public.

In such a possible extreme construction of the law any other course than one of these two, no matter how confidently and in what good faith adopted, may be adjudged an evasion not protecting against the extreme penalties prescribed for infractions of the law.

It is proper to state that in the opinion of counsel there is substantial ground for the view that this feature of the rate bill, if constitutional, is not applicable to this company's situation, and that even if this be not so it is practicable to so modify this situation, without materially affecting revenues, as to meet any just purpose of the law. But to mistakenly treat the law as inapplicable or to make any mistaken change in the company's relations to its coal interests, with a view to avoid its application—in short, to make, even for a brief period, any mistaken forecasts of the judgment of the courts—involves the risk of incurring penalties in overwhelming accumulation.

I think it must be clear that the law can not be ignored until it has been declared invalid by the court; that it can not safely be treated as inapplicable except with the sanction of the court, and that, if valid, the relations of the company to its coal interests can not be safely and conclusively remoulded except with the approval of the court.

I recommend that the trustee of the general lien and convertible mortgage be apprised of the situation and the considerations here stated. These considerations are rather applicable to that mortgage than to the senior lien, the charges under which are well within the revenue capacity of the mortgaged estate, even if reduced through any unlikely construction or application of the law above referred to. The general lien and convertible mortgage by its terms contemplates surrender of possession to the trustee in any contingency making this action just or desirable in the judgment of the company.

The provision in this respect is as follows:

The railroad company, at any time before full payment of the bonds secured hereby, and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the trustee to enter into possession, may, with the consent of the trustee, surrender and deliver to the trustee full possession of the whole or any part of the property, premises, and interests hereby conveyed, or intended so to be, for any period fixed or indefinite.

For the reasons stated it appears that such a contingency as here contemplated exists. The company should acquiesce in the appointment of a receiver under any proceeding which may be instituted by the trustee to protect and enforce its security, as well as in such application as may be made to the court for authority to the receiver to provide for and pay the April interest on the first mortgage.

Under such proceedings it is properly to be assumed that the receiver will apply to the court for instructions as to the course which shall be taken in the protection of the coal business and revenues of the company as affected by the law above referred to.

A more timely determination of the constitutionality of the law, and (if declared constitutional) of its construction in its application to the interests involved, may thus be secured, and property rights and revenues guarded from sacrifice through postponed, doubtful, or mistaken action, or through inaction.

While proceedings as here contemplated may be carried to strict enforcement of mortgage lien, it is far more likely that, in the respite necessarily involved, with a just solution of the questions under the commodity clause of the rate act, and under corrected financial and business conditions which should intervene, an adjustment of the interests of the holders of obligations and securities will be had, and the further demonstrated value and advancing earning capacity of the property will secure the position of the stock.

Respectfully,

B. F. BUSH, *President.*

In the Circuit Court of the United States for the District of Maryland.

BOWLING GREEN TRUST COMPANY, TRUSTEE, COMPLAINANT, AGAINST WESTERN MARYLAND RAILROAD COMPANY, DEFENDANT.

Bill of complaint.

Thompson, Vanderpoel & Freedman, No. 2 Wall street, New York City; Gans & Haman, Calvert Building, Baltimore, Md., solicitors for complainant.

Henry Thompson, Edgar H. Gans, of counsel.

To the honorable the judges of the circuit court of the United States for the district of Maryland, in the fourth judicial circuit, sitting in equity:

Bowling Green Trust Company, a citizen and resident of the State of New York, presents this its bill of complaint against Western Maryland Railroad Company, a corporation organized and existing under the laws of the State of Maryland.

And thereupon humbly complaining, your orator shows unto your honors as follows:

First. That your orator, Bowling Green Trust Company, is a corporation duly organized and existing under the laws of the State of New York, and is a citizen and resident of said State of New York. That the defendant, Western Maryland Railroad Company, is a corporation duly organized and existing under the laws of the State of Maryland, and is a citizen and resident of said State of Maryland.

Second. That on and prior to the 1st day of October, 1902, the defendant company owned and operated the main line of railroad, extending from Hillen Station to Madison street in Baltimore city, a distance of .40 mile, and from Fulton Junction, in said Baltimore city, to Williamsport, a distance of 90.29 miles, and a line connecting the Baltimore & Ohio and the Norfolk & Western railroads in the city of Hagerstown, Maryland, a distance of 1.79 miles; in all, 92.48 miles of railroad, all in the State of Maryland except about three-quarters of a mile in the State of Pennsylvania at Blue Ridge Summit and Penmar, all of which said lines of railroad are more fully described as embraced in the mortgage dated October 1, 1902, made by the defendant company to your orator, as trustee, and hereinafter mentioned.

That on and prior to said 1st day of October, 1902, said defendant company leased and operated the following lines of railroad:

(1) The Potomac Valley Railroad, extending from Potomac Valley Junction, in the State of Maryland, to Cherry Run, in the State of West Virginia, a distance of 14.30 miles.

(2) The Baltimore and Cumberland Valley Railway, extending from Edgemont, in the State of Maryland, to the State line between the States of Maryland and Pennsylvania, a distance of 3.03 miles, and at said State line connecting with

(3) The Baltimore and Cumberland Valley Railroad, extending from the terminus of the Baltimore and Cumberland Valley Railway at the State line between the States of Maryland and Pennsylvania to Waynesboro, in the State of Pennsylvania, a distance of 4.55 miles.

(4) The Baltimore and Cumberland Valley Railroad Extension, extending from said Waynesboro to Shippensburg, a distance of 26.52 miles, all in the State of Pennsylvania.

(5) The Washington and Franklin Railroad, extending from Hagerstown in the State of Maryland to Zumbro in the State of Pennsylvania, a distance of 19.11 miles (but no part of which said Washington and Franklin Railroad, nor any leasehold or other interests therein, is embraced in or covered by the said mortgage of October 1, 1902, to your orator, as trustee, hereinafter mentioned).

(6) The Baltimore and Harrisburg Railway, extending from Emory Grove in the State of Maryland to Orrtanna in the State of Pennsylvania, a distance of 58.7 miles, and from

(7) Valley Junction to Hanover Junction in the State of Pennsylvania, a distance of 6 miles.

(8) The Bachman Valley Railroad, extending from a connection with said last-mentioned railroad at a point called intersection to the State line between the States of Maryland and Pennsylvania, a distance of 1.3 miles.

(9) The Baltimore and Harrisburg Railway (Western Extension), extending from Orrtanna to Highfield in the State of Pennsylvania, a distance of 15 miles; and

(10) The Baltimore and Harrisburg Railway (Eastern Extension), extending from Porters Junction to York, all in the State of Pennsylvania, a distance of 16.6 miles; a distance in all of 165.11 miles of leased lines of railroad.

That on and prior to said October 1, 1902, the defendant company was the owner of the capital stock of leased-line companies in the following amounts, respectively:

13,169 shares of the common capital stock of the Baltimore and Harrisburg Railway Company, of the par value of $658,450, being a majority of the outstanding capital stock of said company.

843 shares of the common capital stock of the Baltimore and Cumberland Valley Railway Company, of the par value of $42,150, being all of the outstanding capital stock of said company except shares for the qualification of directors.

1,509 shares of the common capital stock of the Baltimore and Cumberland Valley Railroad Company, of the par value of $75,450, being all of the outstanding capital stock of said company except shares for the qualification of directors.

9,993 shares of the common capital stock of the Potomac Valley Railroad Company, of the par value of $499,650, being all of the outstanding capital stock of said company except shares for the qualification of directors.

4,779 shares of the common capital stock of the Baltimore and Harrisburg Railway (Western Extension), of the par value of $238,950, being all of the outstanding capital stock of said company except shares for the qualification of directors.

And that on and prior to said October 1, 1902, the defendant company was also the owner of 93 shares of the common capital stock of the Western Maryland Tidewater Railroad Company, of the par value of $4,650, being all of the outstanding capital stock of said company except shares for the qualification of directors.

That all of the stocks above mentioned were, on or about the 1st day of October, 1902, deposited by the defendant company with the Mercantile Trust Company, a corporation of the State of New York, as trustee of the first mortgage of the defendant company dated October 1, 1902, which mortgage is hereinafter more fully referred to, and were and have ever since been and now are held by said trustee as part of the security for bonds issued under said first mortgage; and on or about said 1st day of October, 1902, the defendant company having made previous provision for the acquisition of 103,497 shares of the capital stock of the West Virginia Central and Pittsburg Railway Company (being about ninety-eight per cent of the outstanding capital stock of said last-mentioned railway company), acquired said shares and deposited the same with the said The Mercantile Trust Company, as trustee of said first mortgage, as part of the security thereunder; and said last-mentioned shares of stock by such deposit and pledge became and have ever since been and now are held by said trustee as a part of the security for bonds issued under said first mortgage.

THIRD. That on or about the 1st day of October, 1902, the defendant company, being thereunto duly authorized by law, made, executed, and delivered to the Mercantile Trust Company, a corporation of the State of New York, as trustee, a certain mortgage or deed of trust dated October 1, 1902, wherein and whereby, for the purpose of

securing an issue of bonds in an authorized principal amount of $50,000,000 dated October 1, 1902, maturing October 1, 1952, bearing interest at the rate of four per cent per annum and known as first mortgage four per cent fifty-year gold bonds; and for the other purposes set forth and specified in said mortgage or deed of trust, it conveyed to the said The Mercantile Trust Company all of the railroad, property, rights, privileges, franchises, and interests of the defendant company hereinabove mentioned and described more fully in said mortgage or deed of trust, and also the shares of capital stock owned by the defendant company hereinabove described and enumerated, and certificates for which were simultaneously with the exception of said first mortgage delivered, duly indorsed for transfer, to the Mercantile Trust Company, as trustee thereunder, in trust to secure said first mortgage bonds issued and to be issued under said first mortgage as and in the manner therein described, defined, and set forth.

A true copy of said first mortgage is herewith filed as "Exhibit A" and prayed to be taken as part hereof.

Your orator further shows that at or about the time of the execution of said mortgage and at various times thereafter the defendant company being thereunto duly authorized by law and by corporate action duly and properly had, and in pursuance of the terms of conditions of said morgtage, did duly make, execute, and issue under its corporate seal, and did negotiate and deliver to various persons for value, its bonds secured by said mortgage, all of which said bonds were, as your orator is informed and believes, duly certified by the trustees of said mortgage in conformity with the terms and requirements thereof, and are now outstanding in the principal amount of $42,518,000, of which there are pledged for certain loans of the defendant company, as hereinafter alleged, bonds in the principal amount of $5,037,000.

FOURTH. Your orator further shows that on or about the 1st day of October, 1902, the defendant company being thereunto duly authorized by law, for the purpose of meeting its financial requirements and for its lawful and corporate purposes, pursuant to due and lawful authority and to due corporate action of its board of directors and stockholders, authorized the creation of an issue of $10,000,000, par value, of gold bonds to run for a term of fifty years, to be known as general lien and convertible four per cent fifty-year gold bonds, consisting of coupon bonds with provision for registration, dated as of the 1st day of October, 1902, and bonds registered as to principal and interest, all to mature on October 1, 1952, and to bear interest at the rate of four per cent per annum, payable semiannually on the 1st days of April and October in each year, such interest being payable until and including October 1, 1905, only out of the net earnings of the defendant company, as provided in the mortgage securing said bonds hereinafter mentioned, and to be noncumulative, and thereafter to be payable absolutely; said bonds to be converted at the option of the holders thereof at any time into common capital stock of the defendant company at par; and in order to secure the payment of principal and interest of said bonds according to their tenor and effect, the defendant company, pursuant to due and lawful authority and to due corporate action of its board of directors and stockholders duly made and executed under its corporate seal and delivered

to your orator, as trustee, a mortgage or deed of trust known as its general lien and convertible mortgage, dated October 1, 1902, a copy whereof is herewith filed marked "Exhibit B," and made a part hereof, wherein and whereby said defendant company granted, bargained, sold, aliened, demised, released, conveyed, confirmed, assigned, transferred, and set over unto your orator as trustee and to its successors and assigns forever, all the lines of railroad and property of the defendant company and all the securities covered by and embraced in, or which might thereafter be covered by and embraced in, the first mortgage of the defendant company, hereinabove mentioned, to The Mercantile Trust Company, as trustee, but subject, however, as to all of said railroad property and securities to the lien of said first mortgage; said lines of railroad and property and said securities being described in said mortgage to your orator, as trustee, as follows:

All and singular the line of railroad of the Railroad Company, party hereto of the first part, extending from Hillen Station to Madison street, in Baltimore city, a distance of .40 mile, and from Fulton Junction in said Baltimore to Williamsport, a distance of 90.29 miles and a line connecting the Baltimore and Ohio and the Norfolk and Western Railroads in the city of Hagerstown, a distance of 1.79 miles; in all 92.48 miles of railroad, all in the State of Maryland except about three-fourths of a mile in the State of Pennsylvania at Blue Ridge Summit and at Pen-Mar.

Including, also, any all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, machine shops and other shops, turntables, water stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind, now owned or hereafter acquired by the Railroad Company or its successors in anywise and at any time belonging or appertaining to, or provided for use upon, or in connection with, any line of railway, extension, branch or other property now owned by the Railroad Company or hereafter acquired by it, and subject to the lien of this indenture; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along any line of railway, extension or branch now or at any time hereafter subject to the lien hereof, and any and all locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and other chattels, wheresoever situated now or hereafter held, acquired, or provided for use upon any such line of railway, extension, or branch now owned, or hereafter acquired, and subject to the lien hereof; and any and all leaseholds, leases, rights under leases, or contracts, covenants, and agreements, terms or parts of terms (excepting, however, a lease of the said Washington and Franklin Railroad, dated the first day of July, 1901, and excepting any and all property rights, leasehold interests or agreements under said last mentioned lease) and any and all other property, real or personal, of every kind and description, now owned or hereafter acquired by the Railroad Company for use upon or in connection with, or for the purposes of, any such line of railway, extension, or branch, now or at any time subject to the lien hereof; and, any and all corporate or other rights, privileges, and franchises which the Railroad Company now has, or which the Railroad Company or its successors hereafter shall acquire, possess, or exercise for, or appertaining to, the construction, maintenance, use, or operation of such lines of railway, extensions, and branches or any part thereof, which are now or hereafter may become subject to the lien of this indenture; and any and all the rents, issues, profits, tolls, and other income of all lines of railway, extensions, and branches, and any part thereof, which are now or may become hereafter subject to the lien hereof, and any and all the rights, privileges, franchises, properties, real or personal, rights, and things which the Railroad Company now owns or hereafter shall possess, or become entitled to possess, for the purpose of, or in connection with, any such line of railway, extension, or branch now or hereafter subject to the lien of this indenture.

Also any and all other property of any kind, including bonds and other securities, claims and stocks which, from time to time hereafter, may be expressly conveyed and mortgaged, or delivered, or by writing of any kind assigned or transferred by the Railroad Company or by anyone with its consent in its behalf, to the trustee hereunder; the trustee being hereby authorized, with the consent or approval of the Railroad Company, at any and all times to receive any such property as and for additional security for the bonds issued and to be issued hereunder and to hold and apply any

and all such property subject to the trusts of this indenture: *Provided, however*, and it is hereby expressly covenanted and declared, that any conveyance, mortgage, assignment, or transfer, pursuant to the provisions of this clause, of any property as and for additional security, may be made subject to any reservations, limitations, conditions, and provisions which shall be set forth in an instrument in writing, then executed by the trustee and by the Railroad Company, respecting the use, management, and disposition of such additional property or the proceeds thereof;

Together with all the right, title, estate, interest, and property which the Railroad Company now has, or at any time hereafter may acquire, in or to any of the franchises, lines of railway, extensions, branches, telegraph lines, and other properties, real, personal, or mixed, hereby mortgaged, conveyed, and assigned, or intended so to be.

Subject, however, as to the lines of railroad, property, equipment, rights, and franchises, above described, to a certain mortgage or deed of trust dated October 1, 1902, made by the Railroad Company, party hereto of the first part, to The Mercantile Trust Company, of New York, as trustee, known as the first mortgage of the Railroad Company, conveying the said premises hereinbefore described to the said The Mercantile Trust Company to secure the payment of an authorized issue of $50,000,000 of bonds of Railroad Company, known as its first-mortgage four per cent fifty-year gold bonds, the intent of this provision being that this indenture shall be subject to the said first mortgage as to all the railroads, branches, equipment, rights, franchises, and property of every description herein described, which are or may be embraced in or covered by the lien of said first mortgage.

Also all the right, title, and interest which the Railroad Company now has or may have hereafter acquired in and to all or any of the following-described shares of capital stock now subject to the lien of said first mortgage of the Railroad Company, the certificates for which shares, duly endorsed for transfer, have been deposited and pledged with The Mercantile Trust Company, the trustee of the said first mortgage of the Railroad Company.

13,169 shares of the common capital stock of the Baltimore and Harrisburg Railway Company, of the par value of $658,450.

843 shares of the common capital stock of the Baltimore & Cumberland Valley Railway Company, of the par value of $42,500.

1,509 shares of the common capital stock of the Baltimore & Cumberland Valley Railroad Company, of the par value of $75,450.

9,993 shares of the common capital stock of the Potomac Valley Railroad Company, of the par value of $499,650.

4,779 shares of the common capital stock of the Baltimore & Harrisburg Railway (Western Extension), of the par value of $238,950.

And 93 shares of the common capital stock of the Western Maryland Tidewater Railroad Company, of the par value of $4,650.

Also all the right, title, and interest of the Railroad Company in and to 103,497 shares of the capital stock of the West Virginia Central and Pittsburgh Railway Company.

Subject, however, as to the stocks above described to the lien of said first mortgage of the Railroad Company and to all the conditions and provisions thereof.

Also all other stocks, bonds, certificates of indebtedness, claims, and other property of every name and nature now owned or hereafter acquired by the Railroad Company, which by any of the provisions of this indenture it is required to pledge with, assign, or transfer to the trustee.

Also, subject to the lien of said first mortgage of the Railroad Company, all railroads, property, both real and personal, rights, privileges, and franchises, bonds, stocks, and other securities which now are or hereafter may be subject to the lien of said first mortgage.

All of which above described railroads, premises, property (real and personal), franchises, rights, estates, lands, and appurtenances were in and by said mortgage or deed of trust granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, and set over to your orator, its successors and assigns, to have and to hold the same unto your orator, its successors and assigns forever, for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by said mortgage to your orator, as trustee, and for the enforcement of the payment of said bonds and interest when payable, according to

their tenor, purport, and effect, without any preference or priority or distinction as to lien, or otherwise, of one bond over another by reason of priority in the issue, sale, or negotiation thereof, and for the uses and purposes and upon the conditions in said mortgage or deed of trust declared and expressed.

Fifth. Your orator further shows that your orator accepted said mortgage or deed of trust of October 1, 1902, and the trusts thereunder and united in and executed the same, and has continuously been and now is the trustee under said mortgage.

Sixth. Your orator further shows that at or about the time of the execution of said mortgage or deed of trust the defendant company, being thereunto duly authorized by law and by corporate action duly and properly had, did duly make, execute, and issue, under its corporate seal, and did negotiate and deliver to various persons for value and for the considerations and purposes and as in and the manner and form in said mortgage provided, its bonds to the aggregate principal amount of $10,000,000; all of which said bonds were duly certified by your orator, as trustee, as in said mortgage provided, and all of which said bonds are now outstanding under and secured by said mortgage.

Seventh. Your orator further shows that subsequent to the date of said first mortgage and of said general lien and convertible mortgage, the defendant company acquired additional shares of the capital stock of the West Virginia Central and Pittsburg Railway Company in the amount of 2,144 shares, and deposited and pledged the same with the Mercantile Trust Company, as trustee of said first mortgage of the defendant company, to be held by said trustee as part of the mortgage security, and that said additional shares so deposited and pledged have continuously since the delivery of the same and now are held by said The Mercantile Trust Company, as trustee of said first mortgage, as part of the security thereunder; and that said additional shares are also part of the mortgage security and trust estate under said general lien and convertible mortgage to your orator, as trustee, and the said 2,144 shares of stock of the West Virginia Central and Pittsburg Railway Company so further deposited, together with the 103,497 shares of said stock originally deposited as aforesaid, in all 105,641 shares of said stock, constitute the entire amount of the outstanding capital stock of the said West Virginia Central and Pittsburg Railway Company.

Eighth. Your orator further shows that subseqeunt to the date of said first mortgage and of said general lien and convertible mortgage of the defendant company, and in order to perform and carry out the covenants and undertakings of the defendant company in said mortgages contained, the defendant company constructed a line of railroad extending from a point upon the line of railroad formerly belonging to the Potomac Valley Railroad Company and now owned by the defendant company, at or near Big Pool in the State of Maryland opposite Cherry Run in the State of West Virginia, to a point of connection with the railroad formerly belonging to the Piedmont and Cumberland Railroad Company and now owned by the defendant company, at or near Cumberland in the State of Maryland, said line of railroad being constructed to provide a connection between the lines of railroad then owned or operated by the defendant company and by the West Vir-

ginia Central and Pittsburg Railway Company, and said connecting line of railroad being more particularly described as follows:

Beginning at a point known as Big Pool Station, Washington County, Maryland, on the main line of the Western Maryland Railroad, 105.4 miles distant northwesterly from Hillen Station, Baltimore, Maryland, thence in a general westerly direction through Washington and Allegany counties, Maryland, and Morgan County, West Virginia, to Knobmount, Mineral County, West Virginia, 2.3 miles distant southwesterly from Central Station, Cumberland, Allegany County, Maryland; a total distance of 59.28 miles.

That said line of railroad so constructed by the defendant company was constructed through the use of bonds issued under and secured by said first mortgage of the defendant company, and became and now is subject to the lien of said first mortgage and of said general lien and convertible mortgage of the defendant company.

Ninth. That subsequent to the date of said first mortgage and of said general lien and convertible mortgage of the defendant company, and on or about the 1st day of November, 1905, the defendant company, pursuant to lawful authority and due corporate action, made, executed and delivered to the Mercantile Trust Company, as trustee of the first mortgage of the defendant company, and to your orator, as trustee of said general lien and convertible mortgage of the defendant company, indentures supplemental to said respective mortgages, wherein and whereby the defendant company, pursuant to authority as aforesaid and to action of its board of directors and stockholders, and in order better to secure the payment of the principal and interest of all the bonds of the defendant company at any time issued and outstanding under its said first mortgage and under its said general lien and convertible mortgage, according to their tenor and effect, and in consideration of the covenants of the defendant company in said mortgages contained, did grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto said The Mercantile Trust Company, as trustee of said first mortgage, and unto your orator, as trustee of said general lien and convertible mortgage, upon the terms and conditions and for the uses and purposes in said supplemental indentures contained, certain additional railroads and property (real and personal), rights, privileges, and franchises theretofore acquired and then owned by the defendant company and theretofore owned, respectively, by the West Virginia Central and Pittsburg Railway Company, the Western Maryland Tidewater Railroad Company, the Potomac Valley Railroad Company, the Belington and Beaver Creek Railroad Company, West Virginia Central and Pittsburg Railway Company in Maryland, Piedmont and Cumberland Railway Company, Piedmont and Cumberland Railway Company in West Virginia, Coal and Iron Railway Company, and the Potomac Valley Railroad Company in West Virginia; said railroads and property (real and personal), rights, privileges, and franchises so acquired and conveyed being more particularly described in said supplemental indentures as follows:

I. A. All and singular the railroad and property, real and personal, rights, privileges, and franchises of the railroad company acquired by it as aforesaid from the Western Maryland Tidewater Railroad Company, including the line of railroad, lying and being in the city of Baltimore and in Baltimore County, State of Maryland, beginning for the same at points about 900 feet east of Walbrook Station, in the said city of Baltimore (said station being on the line of the railroad of the Railroad Company at its crossing of North avenue in said city), and running thence southerly and easterly through said city of

Baltimore and Baltimore County, a distance of about six miles, to its terminus at tidewater, at the foot of Gould street, in the city of Baltimore, said point at tidewater being known as Port Covington.

B. All and singular the railroad and property, real and personal, rights, privileges and franchises of the Railroad Company acquired by it as aforesaid from the Potomac Valley Railroad Company, including the line of railroad lying and being in Washington County, State of Maryland, beginning for the same at a point near the town of Williamsport, in said county, known as Potomac Valley Junction, and running thence in a southwesterly direction, through said Washington County, north of the Potomac River, a distance of 13.53 miles to its point of connection with the Railroad Company of the Railroad Company acquired by it as aforesaid from the Potomac Valley Railroad Company of West Virginia.

C. All and singular the railroad and property, real and personal, rights, privileges, and franchises of the Railroad Company, acquired by it as aforesaid from the Potomac Valley Railroad Company of West Virginia, including the line of railroad lying and being in Morgan County, State of West Virginia, beginning for the same at a point on the State line between the States of West Virginia and Maryland, at or in the Potomac River, about one-half mile east of Cherry Run Station on the railroad of the Baltimore and Ohio Railroad Company, and running thence southwesterly through said Morgan County to a point on the south bank of said river at the west end of the Cherry Run yard about two-thirds of a mile west of said Cherry Run Station, where the line of railroad of the Railroad Company connects with the line of railroad of the Baltimore and Ohio Railroad Company, the distance between said termini of said railroad of the Railroad Company being $1\frac{8}{100}$ miles.

D. All and singular the railroad and property, real and personal, rights, privileges and franchises of the Railroad Company acquired by it as aforesaid from the Piedmont and Cumberland Railway Company and the Piedmont and Cumberland Railway Company of West Virginia, including the line of railroad lying and being in Allegheny County, State of Maryland, and Mineral County, State of West Virginia, and extending from the city of Cumberland, in said first-mentioned county, in a generally southwesterly direction to West Virginia Central Junction west of and near the town of Piedmont, Mineral County, State of West Virginia, a total distance of 30 miles more or less.

E. All and singular the railroad and property, real and personal, rights, privileges and franchises of the Railroad Company acquired by it as aforesaid from the West Virginia Central and Pittsburg Railway Company and the West Virginia Central and Pittsburg Railway Company in Maryland, including the line of railroad extending from West Virginia Central Junction, county of Mineral, in the State of West Virginia, through the counties of Mineral, Grant, Tucker and Randolph, in said State of West Virginia, and the county of Garrett, in the State of Maryland, to the city of Elkins, in said Randolph County, and extending from said city of Elkins down Tygart's Valley River through the counties of Randolph and Barbour, in said State of West Virginia, to the town of Belington, in said Barbour County, being a distance $101\frac{44}{100}$ miles more or less.

Also including the branch lines of railroad of the Railroad Company acquired by it as aforesaid from the West Virginia Central and Pittsburg Railway Company, said branch lines being particularly described as follows:

(1) What is known as the Elk Garden Branch, in the county of Mineral, State of West Virginia, and extending from Harrison on the main line to the town of Elk Garden, a distance of seven miles more or less.

(2) What is known as the Hartmansville Branch, also in said county of Mineral, extending from a connection with the Elk Garden Branch aforesaid near Switchback, to Hartmansville, a distance of $3\frac{1}{4}$ miles more or less.

(3) What is known as the Davis Branch, situate in Tucker County, West Virginia, extending from the town of Thomas to the town of Davis, a distance of 6 miles more or less.

(4) What is known as the Beverly and Huttonsville Branch, situate in Randolph County, West Virginia, and extending from the city of Elkins to Huttonsville, a distance of $17\frac{3}{4}$ miles more or less.

F. All and singular the railroad and property, real and personal, rights, privileges and franchises of the Railroad Company acquired by it as aforesaid from the Coal and Iron Railway Company, including the line of railroad beginning at a point of connection with the railroad of the Railroad Company, acquired by it from the West Virginia Central and Pittsburgh Railway Company at or near the city of Elkins, in the county of Randolph, State of West Virginia, and extending southerly through said county, and partly through the county of Pocahontas, in said State, to a connection with the branch

railroad of the Chesapeake and Ohio Railroad Company, at the town of Durbin, in said county of Pocahontas, a distance of 47 miles more or less.

G. All and singular the railroad and property, real and personal, rights, privileges and franchises of the Railroad Company acquired by it as aforesaid from the Belington and Beaver Creek Railroad Company, including the line of railroad lying and being situate in the counties of Barbour and Randolph, in the State of West Virginia, extending in an easterly direction from the town of Belington, in said county of Barbour, to the town of Weaver, in the said county of Randolph, a distance of $6\frac{20}{100}$ miles more or less, and also a branch line of railroad known as the Dartmoor Branch, extending from a point called Weaver Junction to Dartmoor, a distance of $1\frac{12}{100}$ miles more or less, all in the said county of Barbour.

II. All terminals, terminal properties, side tracks, switches turnouts, turntables, and all other real estate, rights, easements, interests in land and improvements thereon of the Railroad Company appurtenant to and acquired or used by it in connection with the railroads and branches covered by and embraced in this indenture, including all road bed, rights of way, superstructures, rails, tracks, bridges, viaducts, trestles, depots, storehouses, warehouses, freight houses, car houses, coal houses, water houses, machine shops, structures, fixtures, and all other property, real and personal, connected with or used in the operation of said railroads and branches.

III. All locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and all other goods, chattels, and personal property of the Railroad Company of whatsoever kind and wheresoever situate, appurtenant to and acquired or used by it in connection with the railroads and other property covered by and embraced in this indenture.

IV. All trackage or operating agreements, traffic or other agreements, bills, bonds, stocks, accounts, notes, demands, claims, and choses in action of any kind and every kind with or against any person or corporation whatever now held or owned by the Railroad Company, or in which it has any interest, or to which it is in any manner entitled, and arising out of or acquired in connection with any of the railroads and other property covered by or embraced in this indenture.

V. All rights, powers, privileges and franchises, charter powers and immunities, which the Railroad Company has or is entitled to exercise under its charter, or by virtue of the laws of Maryland and West Virginia, acts of Congress, or in any manner whatsoever, and acquired or used by it in connection with any of the railroads and other property covered or embraced in this indenture.

VI. All other property, real personal and mixed, rights, privileges, and franchises, not herein specified or stated, which the Railroad Company has acquired in connection with the property covered by and embraced in this indenture, of whatsoever kind or character and wheresoever situate, and all right, title, and interest of the Railroad Company in and to any of the foregoing property in possession or expectancy at law or in equity.

Subject, however, as to certain of the properties above described, to the liens of existing mortgages securing bonds of companies whose properties have been acquired by the Railroad Company, as aforesaid, which bonds have been hereinbefore particularly mentioned and subject further as to all of the properties above described to the lien of the first mortgage of the Railroad Company, dated October 1, 1902, to The Mercantile Trust Company, as trustee.

VII. Also all the right, title, and interest which the Railroad Company now has or may hereafter acquire in and to the following described bonds and shares of capital stock owned by the Railroad Company, which bonds and the certificates for which shares duly endorsed for transfer have been delivered to The Mercantile Trust Company, trustee under the above mentioned first mortgage and subjected to the lien thereof, namely:

$600,000 par value (the entire issue) of first mortgage bonds of the Maryland Smokeless Coal Company; and

9,995 shares (the entire issue except qualification shares) of the capital stock of the Maryland Smokeless Coal Company, of the par value of $100 each.

A copy of each of said supplemental indentures is filed herewith, marked respectively "Exhibit C" and "Exhibit D," and made parts hereof.

That all of said additional railroads and property (real and personal), rights, privileges, and franchises were in and by said supplemental indentures granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, and set over unto your orator, its successors and assigns forever, in trust upon all

the trusts expressed and set forth in said general lien and convertible mortgage of the defendant company as if originally covered by and embraced in said mortgage and as part of the security for the bonds issued and to be issued thereunder, subject, however, as to certain of said properties, to the liens of existing mortgages securing bonds of companies whose properties had been acquired as aforesaid by the defendant company, which said bonds are particularly mentioned in said supplemental indentures, and subject further, as to all of said properties, to the lien of said first mortgage of the defendant company dated October 1, 1902, to the Mercantile Trust Company, as trustee.

Your orator further shows that it united in and executed said indenture supplemental to said general lien and convertible mortgage, and accepted the grants therein and thereby made, upon the terms and conditions in said supplemental indenture set forth and contained.

Tenth. Your orator further shows that said general lien and convertible mortgage to your orator, as trustee, among other things, provides as follows:

SECTION 1. In case default shall be made after October 1, 1905, in the payment of any interest payable on any bond hereby secured, or in case default shall be made in the payment of the principal of any such bond, or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the railroad company, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the railroad company from the trustee or from the holders of five per cent or more in amount of the bonds hereby secured and at the time outstanding, then and in each and every such case the trustee, by its agents or attorneys, may forthwith enter into or upon all or any part of the railroads, rolling stock, property, lands, rights, interests, franchises, and premises hereby conveyed, or intended so to be, or conveyed or intended to be conveyed by any indenture supplemental hereto, and each and every part thereof, and may exclude the railroad company, its agents and servants wholly therefrom, and, having and holding the same, may use, operate, manage, and control said railroads and other premises and property, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents, servants, or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the trustee may, at the expense of the trust estate, from time to time, either by purchase, repair, or construction, maintain and restore, and may insure or keep insured, the rolling stock, tools, machinery, and other property, buildings, bridges, and structures erected or provided for use in connection with said railroads and other premises, and whereof it shall become possessed as aforesaid, in the same manner and to the same extent as is usual with railroad companies, and likewise may, from time to time, at the expenses of the trust estate, make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements thereto and thereon as to it may seem judicious; and the trustee in such case shall have the right to manage the mortgaged premises and property and to carry on the business and to exercise all the rights and powers of said railroad company, either in the name of said railroad company or otherwise, as the trustee shall deem best; and the trustee shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues, and profits of the mortgaged premises and property and every part thereof; and after deducting the expenses of operating said railroads and other premises and conducting the business thereof, and of repairs, maintenance, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges upon the said railroads, premises, or property, or any part thereof, as well as just and reasonable compensation for its own services and for the service of all counsel, agents, and employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

First. In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest thereon, such payments to be made ratably to the persons entitled thereto without any discrimination or preference;

Second. In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof) in the order of the maturity of the installments, and next, if any surplus remains, towards the payment of the principal of all bonds hereby secured, such payments in every instance to be made ratably to the persons entitled thereto without any discrimination or preference.

"Upon the payment in full of whatever may be due for principal or interest, and be payable for other purposes, the premises shall be returned to the railroad company.

SECTION 2. In case (1) default shall be made after October 1, 1905, in the payment of any semiannual installment of interest payable on any bond hereby secured when the same shall become payable, and any such installment shall remain unpaid for a period of six months, or in case (2) default shall be made in the performance of any of the covenants of the railroad company contained in sections 3 or 6 of article third hereof, and any such default shall continue for a period of six months, then and in either of such events the holders of a majority in amount of the bonds hereby secured then outstanding, may, by notice in writing delivered to the railroad company, declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision is, however, subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises or any part thereof shall have been had, all arrears of interest upon all bonds hereby secured then outstanding, with interest on overdue installments of interest, and all expenses properly incurred by the trustee hereunder or by any receiver duly appointed of the mortgaged premises or any part thereof, and its or his own compensation shall be paid by the railroad company to the trustee, and the railroad company shall also pay all taxes and other amounts due and payable under any provision of this indenture, or in case such amounts shall have been collected out of the income of the mortgaged premises, before any sale of the mortgaged premises or any part thereof shall have been had, then and in every such case such declaration and its consequences shall ipso facto be rescinded and annulled; but no such rescission and annulment shall extend to or affect any subsequent default, or impair any right consequent thereon.

SECTION 3. In case default shall be made after October 1, 1905, in the payment of any interest payable on any bond hereby secured and any such default shall continue for a period of six months, or in case default shall be made in the payment of the principal of any such bond when the same shall become due and payable, either by its terms or by declaration of the bondholders as aforesaid or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the railroad company, and any such last-mentioned default shall continue for a period of six months after written notice thereof to the railroad company from the trustee or from the holders of five per cent or more in amount of the outstanding bonds hereby secured, then and in each and every such case the trustee shall be forthwith entitled, with or without entry, personally or by attorney, in its discretion, to sell at public auction to the highest and best bidder, all and singular, the mortgaged railroads and premises, rights, franchises, and property of every description in any manner subject to this indenture, and all right, title, interest, claim, and demand therein, and right of redemption thereof, which sale shall be made in one lot and as an entirety or in separate parcels in accordance with section 6 hereof, and upon such terms as the trustee may fix, and upon any such sale the trustee shall execute and deliver a deed or deeds of transfer or release of the property sold or other writing evidencing such sale; *provided*, that this power of sale shall only be exercised so far as may be authorized by law.

SECTION 4. In case default shall be made after October 1, 1905, in the payment of any interest payable on any bond hereby secured or in case default should be made in the payment of the principal of any such bond when the same shall become due and payable, either by its terms or by declaration of the bondholders as aforesaid, or in case default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the railroad company and such last-mentioned default shall continue for a period of six months after written notice thereof to the railroad company from the trustee or from the holders of five per cent or more in amount of the outstanding bonds hereby secured, then and in each and every such case the trustee may forthwith proceed to protect and enforce its rights and the rights of the bondholders under this indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture for interest or for principal, or both, or for the enforcement of any other

appropriate legal or equitable remedy as the trustee shall deem most effectual in support of any of its rights or duties hereunder.

SECTION 5. Upon filing a bill in equity, or upon other commencement of judicial proceedings as provided in the foregoing section of this article by the trustee to enforce any right under this indenture, the trustee shall be entitled to exercise any and all rights and powers herein conferred, and, as a matter of right, the trustee shall be entitled to the appointment of a receiver of the premises hereby mortgaged and of the tolls, earnings, revenue, rents, issues, profits, and other income thereof, with such powers as the court making such appointment shall confer, and shall be entitled to the application by any such receiver of the net income for the benefit of the holders of the bonds issued hereunder, in accordance with the trusts herein declared. Except as herein expressly provided to the contrary, no remedy in this indenture conferred upon or reserved to the trustee is intended to be exclusive of any other remedy, but every remedy in this indenture provided shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this indenture to the trustee or to bondholders may be exercised from time to time and as often as may be deemed expedient. No delay or omission of the trustee, or of any holder of bonds, hereby secured, to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein. In case the trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned because of a waiver or for any other reason, or shall have been determined adversely to the trustee, then, and in every such case, the railroad company and the trustee shall severally and respectively be restored to their former position and rights hereunder in respect to the mortgaged premises, and all rights, remedies, and powers of the trustee shall continue as though no such proceedings had been taken.

Eleventh. Your orator further shows that a semiannual installment of interest upon the first-mortgage bonds of the defendant company will mature and be and become due and payable on the first day of April, 1908, in the amount of $749,620, and that a semiannual installment of interest upon the general lien and convertible mortgage bonds of your orator will mature and be and become due and payable on the 1st day of April, 1908, in the amount of $200,000; and further, that the defendant company has outstanding certain indebtedness represented by notes in the principal amount of $3,776,750, which notes, together with interest thereon, will mature and become due and payable on the 1st day of April, 1908; that as collateral security for the payment of said last-mentioned notes, there are deposited $5,037,000 par value of first-mortgage bonds of the defendant company, but that the same, if sold at their present market price or at the best price obtainable under existing conditions, will wholly fail to provide for the payment of said notes; and your orator is informed and believes that the holders of said notes are unwilling and have refused to extend the payment of the same, and intend to demand payment of the principal and interest thereof at maturity, and that the defendant company is and will be wholly unable to pay and discharge the same.

Your orator further shows, on information and belief, that by reason of prevailing business and financial conditions, the defendant company is and will be totally unable to meet its said obligations which will mature on the 1st day of April, 1908, including the interest upon its general lien and convertible bonds maturing and payable on that date.

Your orator further alleges that the defendant company is indebted to various persons, firms, and corporations in a large aggregate amount for materials and supplies furnished to it, namely, an amount in excess of $300,000, and that said persons and corporations to whom

said defendant company is so indebted are insisting upon payment of said indebtedness and threaten and, as your orator is informed and believes, are about to bring actions in the courts for the collection of said indebtedness, and that many of said creditors will be entitled to proceed to collect the amount of their claims by process of attachment against and upon the rolling stock, material, supplies, and other property of the defendant company, and that the result of such proceedings will be to deprive the defendant company of the means of operating its railroads and property, thus preventing it from deriving revenues wherewith to pay its indebtedness and from discharging its duties and obligations to the public as a common carrier.

That in the performance of its public functions it is necessary that the defendant company make prompt payment of traffic balances, terminal charges, and trackage rentals involving business with other railroad and terminal companies, as the same become due, and that a failure to pay the same will result in the forfeiture of valuable rights of the defendant company under leases and trackage contracts pledged as part of the mortgage security to your orator, as trustee, and the breaking off of the interchange of business by connecting carriers, resulting in largely decreased revenues.

Your orator further alleges, upon information and belief, that the defendant company has thoroughly and carefully considered the question of providing means for the payment of its matured indebtedness and its indebtedness maturing in the near future, as hereinabove alleged, or the extension or refunding of the same, and has made diligent effort to provide for such payment, extension, or refunding, but that said defendant company has been wholly unable to make such provision and is insolvent.

Your orator further alleges that it has received from the defendant company a certified extract from the record of a meeting of the board of directors of said defendant company held March —, 1908, containing a statement of the affairs of the defendant company and of the conditions affecting the same, which your orator believes to be a true and correct statement and which is as follows:

The president submitted the following communication to the board:

BALTIMORE, *March 4, 1908.*

To the Board of Directors of the Western Maryland Railroad Company:

I have asked for this session of the board in order to lay before it a statement of the important phases of the company's financial and business situation, and to express my own views and recommendations.

The gross revenues of the railway for the six months ended December 31, 1907, increased $540.725.32, or 20.332 per cent, and the net revenues of the company increased $350.176.18, or 30.224 per cent over those of the corresponding period of the last fiscal year, with a resulting surplus over all fixed charges, including the abnormally high cost of temporary loans and renewals.

The company is not confronted with any failure of its revenues to cover its full fixed charges, even including those of the extraordinary character last mentioned, and its business has maintained a steady growth with unmistakable assurance of continued development. It has, however, maturing obligations, arising out of its temporary provisions for capital expenditures, and it must at an early date encounter the problem presented by the commodity clause of the Federal rate law.

The company has been unable to permanently finance improvements, equipment, and additions undertaken in the development of the property and earnings and since justified in all of their results except as their wisdom be now tested by the abnormal conditions of the present money and security markets.

The inability of the company to market securities, of a kind readily marketable when these undertakings were assumed, imposed the necessity of temporary financing.

income, also applied to the same class of expenditures, remains unreimbursed through the sale of capital obligations, with the result that current revenues have been charged with the repayment of the money borrowed for the last matured installments of interest rather than with application to the maturing installments.

Notwithstanding its earnings have been fully adequate, the company is thus behindhand for the amount of the next maturing coupons—a situation not unusual where net earnings have been temporarily applied to capital account, but one which becomes most difficult in such a failure of security markets as we now experience.

As you are aware, this company has outstanding loans maturing April 1, 1908, in the amount of $3,776,750, secured by pledge of $5,037,000 of its first mortgage bonds. The market price of these bonds—originally in such excess over the loans as to promise a considerable surplus applicable to the reimbursement of the treasury for capital expenditures—has, notwithstanding steady and substantial increase in the gross and net revenues of the company, shrunk to a level below the face of the loans.

It has now become apparent that the company will be unable to meet these loans or to provide additional collateral to secure their extension. In this situation the company itself will, of course, be unable to borrow the money necessary to meet mortgage interest falling due on the first of April next.

This immediate inability to meet the April interest requirements will affect the first mortgage interest at most to the extent of but a brief delay and, in the view in which I make the subjoined recommendations, not at all. The intrinsic value of the securities held as collateral against the company's loans must, in any event, remain much above the level of their amounts, and with a just solution of the questions under the commodity clause, their market value should be restored.

The general lien and convertible mortgage of the company is in greater degree, and the stock vitally, interested in the preservation of the coal revenues of the company from the adverse conditions of the commodity clause of the rate bill.

That clause is as follows:

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

The coal properties of this company are rightfully owned and operated under charter of the State of West Virginia and the transportation and commercial features of the company's coal business have been so conducted that no charge of improper methods or abuse of any character was forthcoming in response to the invitations for complaints extended by the Federal Commission in its protracted investigation of the methods and business of the coal producing and coal carrying roads. The coal properties are a material part of the security for the company's mortgages and the revenues from its coal business can not be sacrificed or seriously diminished without materially affecting income applicable to its junior securities. The law cannot be generally observed, in the extreme construction of which it is susceptible, without either a wholesale marketing of coal lands, impracticable except at appalling loss to proprietary and mortgage interests, or a restriction of production to the fuel requirements of the roads, entailing vast loss of revenue to them and inevitable exactions from the public.

In such a possible extreme construction of the law any other course than one of these two, no matter how confidently and in what good faith adopted, may be adjudged an evasion not protecting against the extreme penalties prescribed for infractions of the law.

It is proper to state that in the opinion of counsel there is substantial ground for the view that this feature of the rate bill, if constitutional, is not applicable to this company's situation, and that even if this be not so it is practicable to so modify this situation, without materially affecting revenues, as to meet any just purpose of the law. But to mistakenly treat the law as inapplicable or to make any mistaken change in the company's relations to its coal interests with a view to avoid its application—in short, to make, even for a brief period, any mistaken forecast of the judgment of the courts—involves the risk of incurring penalties in overwhelming accumulation.

I think it must be clear that the law can not be ignored until it has been declared invalid by the court; that it can not safely be treated as inapplicable except with the sanction of the court, and that, if valid, the relations of the company to its coal interests can not be safely and conclusively remoulded except with the approval of the court.

I recommend that the trustee of the general lien and convertible mortgage be apprised of the situation and the considerations here stated. These considerations

are rather applicable to that mortgage than to the senior lien, the charges under which are well within the revenue capacity of the mortgaged estate, even if reduced through any unlikely construction or application of the law above referred to. The general lien and convertible mortgage by its terms contemplates surrender of possession to the trustee in any contingency making this action just or desirable in the judgment of the company.

The provision in this respect is as follows:

"The railroad company, at any time before full payment of the bonds secured hereby, and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the trustee to enter into possession, may, with the consent of the trustee, surrender and deliver to the trustee full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite."

For the reasons stated it appears that such a contingency as here contemplated exists. The company should acquiesce in the appointment of a receiver under any proceeding which may be instituted by the trustee to protect and enforce its security, as well as in such application as may be made to the court for authority to the receiver to provide for and pay the April interest on the first mortgage.

Under such proceedings it is properly to be assumed that the receiver will apply to the court for instructions as to the course which shall be taken in the protection of the coal business and revenues of the Company as affected by the law above referred to.

A more timely determination of the constitutionality of the law, and (if declared constitutional) of its construction in its application to the interests involved, may thus be secured and property rights and revenues guarded from sacrifice through postponed, doubtful or mistaken action, or through inaction.

While proceedings as here contemplated may be carried to strict enforcement of mortgage lien, it is far more likely that, in the respite necessarily involved, with a just solution of the questions under the commodity clause of the rate act, and under corrected financial and business conditions which should intervene, an adjustment of the interests of the holders of obligations and securities will be had, and the further demonstrated value and advancing earning capacity of the property will secure the position of the stock.

Respectfully, B. F. Bush,
President.

Upon consideration and on motion duly made and seconded it was—

Resolved, That the communication of the president, dated March 4, 1908, and the recommendations therein made be and the same are hereby approved and the secretary of this company is hereby authorized to transmit said communication and this resolution, in the form of a certified copy of this record, to the Bowling Green Trust Company, the trustee of this company's general lien and convertible mortgage, dated October 1, 1902, to the end that said trustee may be fully informed in the premises and may take such action as it may be advised.

Twelfth. Your orator further alleges and shows that the West Virginia Central and Pittsburg Railway Company, all of whose capital stock is, as hereinabove set forth, pledged and deposited with the Mercantile Trust Company, as trustee of the first mortgage of the defendant company, and constitutes a part of the trust estate under said general lien and convertible mortgage to your orator, as trustee, is, as duly authorized by its charter, and has for a long time been, the owner of certain valuable and extensive coal lands, coal mines, mining rights and mining operations, located in the State of West Virginia, embracing a coal area of over 100,000 acres in extent, and that said coal properties form a substantial and valuable portion of the security for the bonds of the defendant company; that in and by an act of Congress entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the interstate Commerce Com-

mission, approved June 29, 1906," it is provided, among other things, as follows:

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity other than timber and the manufactured products thereof, manufactured, mined, or produced by it or under its authority, or which it may own or hold in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Your orator alleges, on information and belief, that serious questions may be presented and asserted under the provisions of the act of Congress above recited as to the application of the same, if constitutional and valid, to the defendant company by reason of its ownership of all of the stock of the West Virginia Central and Pittsburg Railway Company, pledged as hereinbefore mentioned, and that a determination of said questions, which can only effectively be had in the courts, is material and vital to your orator and to the holders of said general lien and convertible bonds of the defendant company. That a large part of the revenues of the defendant company applicable to the payment of the interest upon its general lien and convertible mortgage bonds is derived through the transportation by the defendant company of coal mined from the property owned by the West Virginia Central and Pittsburg Railway Company, and that the loss of such revenues would greatly and seriously and irretrievably impair the security for the bonds issued under said general lien and convertible mortgage to your orator, as trustee.

Thirteenth. Your orator further alleges that said general lien and convertible mortgage to your orator, as trustee, specifically pledges to your orator all the rents, issues, profits, tolls, and other income of the premises embraced in said general lien and convertible mortgage, and that the income and revenues of the premises embraced in said mortgage are an essential part of the security of your orator, and your orator is entitled to have such income and revenues forthwith, immediately and continuously appropriated to the payment of the interest upon said bonds secured by said mortgage, and that said mortgage specifically pledges to your orator the franchise to maintain and operate the railroad and property in said mortgage described.

Fourteenth. Your orator further shows and alleges that said general lien and convertible mortgage of the defendant company to your orator, as trustee, among other things, provides as follows:

SECTION 14. The railroad company, at any time before full payment of the bonds secured hereby, and whenever it shall deem it expedient for the better protection and security of such bonds, although there be then no default entitling the trustee to enter into possession, may, with the consent of the trustee, surrender and deliver to the trustee full possession of the whole or any part of the property, premises, and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the trustee, with its consent, the trustee shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof, for such period fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or any part thereof, the trustee, from the time of its entry, shall work, maintain, use, manage, control, and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof as provided by section 1 of this article.

Fifteenth. Your orator further alleges that it is entitled to have the property covered by and embraced in said general lien and convertible mortgage protected from waste and disintegration, and to have the same operated as a going concern, so that the rights and interests of the holders of the bonds issued under said mortgage may be protected and conserved, and the obligations of the defendant company to the public as a common carrier of freight and passengers be permitted to be discharged.

Your orator further alleges that the chief purposes and aims of the defendant company, as publicly expressed by it and set forth in its mortgages hereinabove mentioned, have been to acquire, own, and operate a continuous through line of railroad with suitable and adequate terminal facilities at tide water in the city of Baltimore and running to the coal fields of West Virginia; and in order to accomplish such purposes the defendant company has acquired the various properties and constructed the various lines of railroad and terminal properties as hereinbefore set forth, and that there is danger that a dismemberment of its system will occur and that its main purposes and aims, now largely accomplished, will be frustrated and nullified unless all of its property covered by and embraced in said general lien and convertible mortgage is preserved and operated as a whole and as a going concern.

Sixteenth. Your orator further alleges that it has been advised by the defendant company of its immediate needs and necessities as hereinabove recited, and of the serious consequences which will result from its failure to provide for the same, and that it is the belief of the defendant company that adequate and complete protection to the holders of all its securities and obligations can only be had through application to this honorable court; and further, that the holders of a large amount of the bonds issued under said mortgage to your orator, as trustee, have requested your orator, as trustee of said mortgage, to take the action and pray for the relief herein set forth, in the belief that the same is for the best interests of the holders of said bonds and of all other securities and obligations of said defendant company.

Your orator further alleges that a large portion of the railroad and property of the defendant company covered by said mortgage to your orator, as trustee, is located within the State of Maryland, and that said defendant company was organized and incorporated under and pursuant to the laws of said State and maintains in said State its principal office and place of business. And your orator further alleges that the matters in controversy herein exceed the sum of $5,000, exclusive of interest and costs, and that this is a controversy in the nature of a civil suit wholly between citizens of different States.

Wherefore and forasmuch as your orator is remediless in the premises, under and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, your orator files this its bill of complaint and prays, the premises considered:

1. That for the purpose of preserving the integrity of the railroad property, premises, and franchises embraced in and covered by said mortgage to your orator, as trustee, and of preventing the disruption thereof by separate executions, attachments, or sequestrations, or by the enforcement of liens upon separate portions thereof, and for the purpose of continuing the business of the defendant company as a

going concern, and handling properly the earnings derived from the operation of said railroads and property, and preventing commerce between the States being interfered with and a multiplicity of suits, pending final decree and so long as may be necessary, a receiver be appointed by this court of all and singular the railroads, rolling stock, franchises, rights, and property, real, personal, and mixed, belonging to the defendant company and covered by and embraced in said mortgage to your orator, as trustee, with full power and authority to demand, use, convey, collect, and take into his possession said railroad, rolling stock, and appurtenances and all the property and premises embraced in said mortgage, and with all the incidental powers ordinarily vested in a receiver in like cases, and with full power and authority to manage and operate the said railroads and property and to collect and receive all rents, issues, profits, and income thereof, and to apply the same under the order or decree of this court, and to appoint such agents and attorneys as may be necessary to the proper management of all of said property and business for such period as the court shall order.

2. Your orator further prays that a writ of injunction be issued out of and under the seal of this honorable court by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining, and restraining the said defendant company from interfering with, transferring, selling, or disposing of any of the property covered by and embraced in said mortgage or deed of trust, and that your orator may have such other and further relief in the premises as the nature and circumstances of this case may require and to this honorable court shall seem meet.

3. That said mortgage or deed of trust to your orator, as trustee, executed and delivered by the defendant company and hereinabove mentioned and described, may be decreed to be a lien upon all of the railroad and property, real or personal, rights, privileges, and franchises in said mortgage or deed of trust described, or subsequently acquired by the defendant company and subjected to the lien of said mortgage or deed of trust, and the nature, extent, and character of said property and premises may be ascertained and determined, and that in the event of default being made by the defendant company in the payment of the interest falling due upon April 1, 1908, upon the general lien and convertible mortgage bonds of the defendant company, as hereinabove alleged to be imminent and likely to occur, the defendant company may be decreed to pay unto your orator the amount of such defaulted interest and all other sums which may become due and payable under and by virtue of said mortgage or deed of trust so executed to your orator as aforesaid, and that in default thereof said defendant company and all persons claiming under it may be forever barred and foreclosed of and from all equity or redemption and claim of, in and to said mortgaged premises and every part and parcel thereof, and that all and singular said mortgaged premises with the appurtenances, property and effects, rights, immunities, and franchises under said mortgage mentioned and conveyed, or intended so to be, may be sold under a decree of honorable court, and that out of the moneys arising from the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of such sale, including attorneys and counsel fees and the reasonable charges of your orator for services

rendered as trustee and for all expenses incurred by it in the premises and all payments which may be made for taxes or assessments, or otherwise, on the said premises or any part thereof, said proceeds be applied to the payment of the principal of such of said bonds secured by said mortgage to your orator as trustee as may be at that time unpaid, whether or not the same shall previously have become due, and of the interest which shall at that time have accrued upon said principal and be unpaid; and your orator further prays that in the event of the happening of such default by the defendant company in the payment of the interest maturing April 1, 1908, upon said general lien and convertible mortgage bonds, your orator may have leave to file in this cause its supplemental bill of complaint against the defendant company, alleging and setting forth such default and praying for relief by way of foreclosure of said mortgage to your orator as trustee as hereinbefore prayed, and for such other and further relief as may be appropriate and to which your orator may be entitled.

4. That your honors may grant unto your orators a writ of subpœna, directed to the defendant company, thereby commanding it at a certain time and under a certain penalty therein to be named, personally to be and to appear before this honorable court, then and there to answer to all and singular the matters aforesaid but not under oath (answer under oath being expressly waived) and to stand and abide by and perform such order, direction, or decree as shall be made herein and as to your honors shall seem equitable and just.

And your orator, as in duty bound, will ever pray.

BOWLING GREEN TRUST COMPANY.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
County of New York, ss:

William H. Taylor, being duly sworn, deposes and says: That he is vice-president of the Bowling Green Trust Company, the complainant in the foregoing bill of complaint; that he signed said bill of complaint and caused the seal of said Bowling Green Trust Company to be attached thereto and was and is duly authorized so to do on behalf of said complainant; that he has read the foregoing bill of complaint and knows the contents thereof, and the said bill of complaint is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

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In the Circuit Court of the United States for the District of Maryland.

BOWLING GREEN TRUST COMPANY, TRUSTEE, COMPLAINANT, *against* WESTERN MARYLAND RAILROAD COMPANY, DEFENDANT.

Order appointing receiver.

Upon reading and considering the verified bill of complaint in this cause, and on motion of counsel for the complainant, and the defend-

ant, Western Maryland Railroad Company, appearing by counsel and assenting thereto, and due deliberation being had, it is

Adjudged, ordered, and decreed by the court that:

1. Benjamin F. Bush be, and he is hereby, appointed receiver of all the property, lands, railroads, premises, and franchises embraced in and covered by the mortgage made by Western Maryland Railroad Company to the complainant herein, as trustee, dated October 1, 1902, and the indenture supplemental thereto made by the defendant, Western Maryland Railroad Company, to the complainant herein, as trustee, dated November 1, 1905.

2. Said receiver be, and he is hereby, authorized, empowered, and directed to take immediate possession of all and singular the railroads, property, lands, and premises covered by and embraced in said mortgage wherever situated or found, and to manage and operate the said railroads and property in such manner as will in his judgment produce the most satisfactory results, and to this end exercise the authority and franchises of the defendant company, and to discharge all the public duties obligatory upon it, and to collect and receive the income and tolls of said mortgaged property and to hold and retain the net revenues thereof in such manner and to the end that the same may be applied under such orders as the court may hereafter make in the premises as and for the purposes provided in said mortgage of Western Maryland Railroad Company to the complainant herein, as trustee.

3. Said receiver is also authorized and empowered to institute and prosecute such suits as may be necessary in his judgment for the proper protection of said property, and to likewise defend any actions which have been or may be brought seeking to establish any claims, liens, or demands on said property of which he is hereby appointed receiver, and also to appear in and conduct the prosecution or defense of any actions, proceedings, or suits now pending in any court or before any officer, Department, commission or tribunal in which the defendant company is a party, the prosecution or defense of which will in the judgment of said receiver be necessary for the proper protection of the property or business placed in his charge.

4. Said receiver shall execute a bond, in the sum of $100,000, conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which may come into his hands, and abide by and perform all things which he shall be directed to do, with sufficient surety or sureties, to be approved by a judge of this court, and file the same in the office of the clerk of this court within ten days after the date of this order.

5. Said receiver is hereby directed to deposit the moneys coming into his hands in some bank or banks and report to the court what banks he has selected, and said receiver be, and he is hereby, authorized, in his discretion, from time to time out of the moneys coming into his hands, to pay (1) all current expenses incident to the creation or administration of this trust and to the operation of the railroads and property of which he is appointed receiver; (2) all sums due or to become due to connecting or intersecting lines of railroad arising from interchange of business and for track service of other railroads used by said Western Maryland Railroad Company in the operation of its lines, and all traffic and car mileage balances; (3) all taxes and

assessments lawfully due or to become due upon the property in the possession of the receiver; (4) all just and legal debts of the Western Maryland Railroad Company which accrued or were incurred within six months for work, labor, materials, machinery, and fixtures of every kind and character upon or furnished in the current operation of the railroads and property of which a receiver is hereby appointed.

6. Said receiver shall open proper books of account and cause to be kept therein due and proper account of the earnings, expenses, receipts, and disbursements in respect of the property of which he is hereby appointed receiver, and preserve proper vouchers for all payments made by him on account thereof.

7. That all parties having in their possession any of the said mortgaged premises and property shall deliver said premises and property to said receiver, and each and every of the officers, directors, agents, and employees of Western Maryland Railroad Company, and all other persons and corporations whatsoever, are hereby restrained and enjoined, during the pendency of this action or until the further order of this court, from interfering with, transferring, concealing or disposing of any of the property of the defendant, Western Maryland Railroad Company, embraced in its said mortgage to the complainant, as trustee, or from taking possession of or in any way interfering with the same or any part thereof, or from interfering in any manner to prevent the discharge by said receiver of his duties or the operation of the said property under the orders of this court.

8. Said receiver shall retain possession and continue to discharge the duties or trust aforesaid until the further order of this court in the premises, and he shall from time to time make report of his doings in the premises, and may from time to time apply to this court for such other and further order and direction as he may deem necessary and requisite to the due administration of said trust, and said receiver is vested, in addition to the powers aforesaid, with all the general powers of receivers in cases of this kind subject to the supervision of this court.

9. The complainant herein is authorized to apply to any other United States circuit court of competent jurisdiction for such order or orders in the premises as the complainant may deem necessary in aid of the orders issued by this court. The right is reserved to the parties hereto to apply to the court for any further or other instructions to said receiver, and this court reserves the right to make such further orders as may be proper touching the payment of all just claims and accounts for labor, supplies, services, salaries, wages, and other liabilities of the defendant company and to charge such claims upon the mortgaged premises as prior and preferred claims, and this order is made upon the express condition that the legal and valid debts and liabilities incurred by the receiver in the operation of its railroads and property shall be paid by the receiver hereby appointed out of the earnings of said railroads and property, or out of the corpus of said property if such earnings shall be insufficient for that purpose, as may be hereafter ordered by the court.

Dated March 5, 1908.

THOS. J. MORRIS, *Judge.*

In the Circuit Court of the United States for the District of Maryland.

BOWLING GREEN TRUST COMPANY, TRUSTEE, COMPLAINANT, AGAINST WESTERN MARYLAND RAILROAD COMPANY, DEFENDANT.

Petition of complainant for authority to the receiver to provide for and pay the interest falling due April 1, 1908, on the first mortgage bonds of the defendant company, through the issue and sale of receiver's certificates; and for separate operation of coal properties and separate accounts of the business thereof, and for the sequestration and application of the revenues thereof for the protection and benefit of lienholders.

Thompson, Vanderpoel & Freedman, No. 2 Wall street, New York City; Gans & Haman, Calvert Building, Baltimore, Md., Solicitors for complainant.

Henry Thompson, Edgar H. Gans, of counsel.

Now comes Bowling Green Trust Company, trustee under the general lien and convertible mortgage of Western Maryland Railroad Company, dated October 1, 1902, complainant herein, and respectfully petitioning this honorable court, shows as follows:

First. That on the 5th day of March, 1908, this petitioner, as trustee of the general lien and convertible mortgage of Western Maryland Railroad Company, dated October 1, 1902, filed its bill of complaint in this court against said railroad company, wherein and whereby it prayed, among other things, for the appointment of a receiver of all and singular the railroad, rolling stock, franchises, rights, and property—real, personal, and mixed—belonging to said railroad company and covered by and embraced in said mortgage to your petitioner, as trustee, and upon the filing of said bill of complaint the defendant railroad company entered its appearance in said cause and consented to the appointment of a receiver as prayed, and that thereupon and on the same date this honorable court made and entered an order appointing Benjamin F. Bush, esq., the receiver of the property of said railroad company as prayed in said bill.

That thereafter, by orders entered on March 6, 1908, by the circuit court of the United States for the northern district of West Virginia and the middle district of Pennsylvania, and by an order entered by the United States circuit court for the southern district of New York on March 18, 1908, said receiver was appointed receiver of all the railroad, property, and franchises of said railroad company covered by and embraced in said mortgage and lying and being within the jurisdiction of said courts, respectively.

That thereafter said receiver qualified, as required by the orders of said courts, and took possession of and is now in possession of all the railroad, property, and franchises of which he was by said orders appointed receiver.

Second. Your petitioner further alleges that the defendant company made, executed, and delivered to the Mercantile Trust Company, as trustee, its first mortgage, dated October 1, 1902, to secure the payment of the principal and interest of an issue of first mortgage bonds; and that said first mortgage so executed and delivered covers and embraces all the railroads, property, and franchises of the defendant company which are also covered by and embraced in the general lien and

convertible mortgage of the defendant company to your petitioner, as trustee; and that the lien of said general lien and convertible mortgage is, as to all of the property covered by and embraced therein, junior and subordinate to the lien of said first mortgage of the defendant company, both as to the railroads and property therein embraced and as to the net income, revenues, and profits derived therefrom, and that the payment of the interest upon said first mortgage bonds, as the same matures from time to time in accordance with the terms thereof, is a prior and superior charge to the interest maturing during the same periods upon said general lien and convertible mortgage bonds.

Third. Your petitioner further alleges that in and by said first mortgage of the defendant company it is provided, in substance, that in case default shall be made in the payment of interest on any bond thereby secured, as the same matures, the trustee of said first mortgage may forthwith enter into or upon all or any part of the railroads, rolling stock, property, rights, interests, franchises, and premises covered by and embraced in said mortgage and may operate, manage, and control the same and carry on the business and exercise all the rights and powers of the defendant company and be entitled to collect and receive all tolls, earnings, incomes, and rents of the mortgaged premises, and, after deducting the expenses of operating said railroads and other premises and certain other payments, apply said net revenues to the payment of the defaulted interest upon said first mortgage bonds; and that said first mortgage further provides that, in the event of such default and during the continuance thereof, the trustee of said first mortgage shall be entitled to vote on all shares of stock then held by it thereunder, and, for the benefit of the holders of said first mortgage bonds, shall be entitled to receive and collect all interest moneys and all dividends maturing and payable upon all such bonds and stock and apply the same toward the payment of the interest so in default upon said first mortgage bonds.

Fourth. Your petitioner further shows that said first mortgage also provides that in case default shall be made in the payment of any interest upon any first mortgage bonds, and any such default shall continue for a period of six months, the trustee of said first mortgage shall be entitled to sell all and singular the mortgaged railroads and premises, rights and franchises, and all stocks, bonds, and other obligations and interests of every description then held by the trustee of said mortgage, in one lot or in separate parcels and upon such terms as said trustee may fix.

Fifth. Your petitioner further alleges that said first mortgage of the defendant company also provides that in case default shall be made in the payment of any semiannual installment of interest on any bond secured by said first mortgage when the same shall be and become payable, and in case any such interest installment shall remain unpaid for a period of six months, the holders of a majority of the amount of bonds secured by said first mortgage then outstanding may, by notice in writing, declare the principal of all bonds thereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall be and become immediately due and payable, anything in said mortgage or in said bonds to the contrary notwithstanding.

Sixth. Your petitioner further shows that said first mortgage also provides that the remedies conferred by said first mortgage, as above set forth, are therein stated to be cumulative and not exclusive of any other remedy; and that, upon default being made in the payment of any interest on any bonds secured by said first mortgage, the trustee thereof may proceed for the foreclosure of said mortgage, and upon filing a bill in equity for such foreclosure, the trustee of said first mortgage shall be entitled to the appointment of a receiver of the mortgaged premises and of the tolls, earnings, revenues, and profits thereof, and shall be entitled to the application by any such receiver of the net income of the mortgaged premises for the benefit of the holders of said first mortgage bonds in accordance with the trusts in said mortgage declared.

Seventh. Your petition further shows that said first mortgage also provides that in case of sale of the mortgaged railroads and property, pursuant to judicial proceedings instituted by the trustee of said first mortgage, the whole of the principal sum of the bonds thereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in said mortgage to the contrary notwithstanding.

For a true and accurate statement of the foregoing provisions of said first mortgage, your petitioner prays leave to refer to a true copy thereof filed as "Exhibit A" to its said bill of complaint.

Eighth. Your petitioner further alleges that the defendant company has, from time to time, executed and issued its first mortgage bonds pursuant to the provisions of said first mortgage, and that there are outstanding at the time of the filing of this petition first mortgage bonds of the defendant company, issued as aforesaid, in the aggregate principal amount of $42,518,000, upon which the semiannual instalment payable on the 1st days of April and October in each year amounts to the sum of $850,360.

Ninth. Your petitioner further alleges that in and by the bill of complaint filed by it herein, as aforesaid, it was alleged, among other things, that a semiannual instalment of interest upon the outstanding first mortgage bonds of the defendant company would mature and be and become due and payable on the 1st day of April, 1908, in the amount of $749,620; and your petitioner alleges that since the filing of said bill of complaint, first mortgage bonds of the defendant company at that time and theretofore hypothecated and pledged in the amount of $5,037,000 for security for the payment of loans of said defendant company, as alleged in said bill of complaint, have been sold by the holders of the notes representing said loans and are now outstanding, so that the semiannual instalment of interest upon the first mortgage bonds of the defendant company maturing on April 1, 1908, is, as stated above, the sum of $850,360.

Tenth. Your petitioner further alleges that in and by said bill of complaint your petitioner alleged, on information and belief, that the defendant company was and would be totally unable to pay the interest so maturing upon its first mortgage bonds, and that the defendant company would also be totally unable to pay the interest which would become due and payable on its general lien and convertible mortgage bonds maturing April 1, 1908, in the amount of $200,000; and your petitioner prayed in said bill of complaint that, in the event of default

being made by said defendant company in the payment of the interest falling due, as aforesaid, upon April 1, 1908, upon said general lien and convertible mortgage bonds, the mortgage securing the same might be foreclosed under decree of this honorable court.

Eleventh. Your petitioner further alleges that prior to the acquisition by the defendant company of certain portions of its railroad and property, the corporations which were the prior owners thereof executed certain mortgages thereon to secure various issues of bonds; and your petitioner alleges that the bonds of said companies, predecessors in ownership to the defendant company of certain portions of its railroad and property now outstanding, are as follows:

Potomac Valley Railroad Company first mortgage bonds	$1,300,000
West Virginia Central and Pittsburg Railway Company first mortgage bonds	3,250,000
Piedmont and Cumberland Railway Company first mortgage bonds	650,000
Coal and Iron Railway Company first mortgage bonds	1,000,000

Twelfth. Your petitioner further alleges that the amount of bonds secured by mortgage upon all or any part of the property covered by and embraced in said general lien and convertible mortgage and the amount of the annual interest upon said bonds and the date of maturity of the principal thereof and the interest thereon, are fully set forth in a statement filed herewith and made a part hereof, marked "Exhibit A" and your petitioner prays leave to refer to said statement with the same force and effect as if it were herein set forth and incorporated at length.

Thirteenth. Your petitioner further alleges that the amount of outstanding bonds secured by mortgage upon all or any part of the railroad and property of the defendant company which is also covered by and embraced in said general lien and convertible mortgage, is the principal sum of $48,718,000, and that the annual interest charge upon said bonds so outstanding is the sum of $2,043,220.

Fourteenth. Your petitioner further alleges that said defendant company has, from time to time, entered into certain leases and contracts covering the possession and operation of certain branch lines of railroad, and by the terms of said leases and contracts has covenanted and agreed to make certain payments by way of rentals thereunder. That all of said leasehold interests, as well as all profits and revenues arising therefrom, of the defendant company (with one exception, as stated in your petitioner's bill of complaint herein) are covered by and embraced in said first mortgage of the defendant company and in said general lien and convertible mortgage of the defendant company as a part of the mortgaged or trust estate thereunder; and your petitioner files herewith as part hereof, marked "Exhibit B," a statement showing the amount of annual rentals of said leased lines showing the amounts thereof and the dates when the same are payable, and prays leave to refer to said statement with the same force and effect as if it were herein set forth and incorporated at length.

Fifteenth. Your petitioner further alleges that the amount of annual rentals payable by the defendant company, as aforesaid, for the possession and use of said leased lines of railroad, is the sum of $141,103.72.

Sixteenth. Your petitioner further alleges that certain portions *of the real estate* of the defendant company appurtenant to and

necessary for use in connection with the operation of its lines of railroad covered by its mortgages as aforesaid, are owned by said defendant company subject to various mortgages resting upon said specific pieces of real estate, and your petitioner files herewith as part hereof, marked "Exhibit C," a statement showing the principal amount of mortgages resting upon said specific pieces of real estate and the annual interest charge upon said mortgages, and prays leave to refer to said statement with the same force and effect as if it were herein set forth and incorporated at length; said interest charge being the sum of $5,190.68.

Seventeenth. Your petitioner alleges and shows that the amount of interest rentals and fixed charges, as above set forth and alleged, constituting charges prior to the payment of interest upon the general lien and convertible mortgage bonds of the defendant company, amount annually, as at present constituted, to the sum of $2,189,514.40, and that payment thereof must be made in preference of and prior to the payment of interest upon said general lien and convertible mortgage bonds accruing during the same period, and that said prior charges and payments are the only charges and payments prior in rank to the payment of interest upon said general lien and convertible mortgage bonds out of the income of the property covered by said last-mentioned mortgage.

Eighteenth. Your petitioner further alleges that in each year since the execution of the first mortgage of the defendant company, the earnings and income of the defendant company applicable to the payment of the interest upon outstanding first mortgage bonds have been more than sufficient to satisfy and discharge said interest as the same matured, after the payment of interest upon all underlying liens and all prior charges; and that for the six months ended April 1, 1908, the defendant company will, as your petitioner verily believes, have derived earnings properly applicable to and sufficient to pay in full the first mortgage interest maturing upon said date upon the entire amount of first mortgage bonds of the defendant company now outstanding; and that earnings so applicable would have been available for that purpose had not the amount thereof been applied and used by the defendant company for the purpose of providing improvements, equipment, and additions to its property, for which expenditures no reimbursement has been had through the sale of capital obligations, with the result that the revenues of said defendant company have been charged with the repayment of money borrowed to meet and discharge the last matured instalment of interest upon said first mortgage bonds.

That the failure of the defendant company to capitalize the expenditures made by it out of revenues and income for capital purposes by way of improvements, betterments, and expenditures made in the development of its property and business has been due to the conditions which have prevailed in financial markets making it impracticable for the defendant company to issue and dispose of its capital securities upon justifiable terms and conditions, and had the defendant company had the advantage of markets existing at the time of the initial issue of its mortgage bonds, or of any normal market conditions, such expenditures would have been funded and capitalized upon an interest return fair to the defendant company and would have also permitted the defendant company to fund for a long period its tem-

porary loans and obligations which it was necessary for the defendant company to make at high rates of interest and with frequent renewals, and the defendant company would thus have been saved a large amount of expense necessarily incurred by it in connection with said temporary loans and arrangements and the various renewals and extensions thereof.

Nineteenth. Your petitioner further alleges that the total net income, applicable to the payment of fixed charges, of the defendant company for the year ended June 30, 1907, as stated in the published report of said company to its stockholders was the sum of $2,655,550.58, being an amount greatly in excess of that required to pay and discharge all fixed charges and payments prior as aforesaid to the payment of interest upon the general lien and convertible mortgage bonds of the defendant company as said prior charges are now constituted.

That for the calendar year ended December 31, 1907, the total net income of the defendant company applicable to the payment of said prior charges was the sum of $3,005,726.76, being a surplus of $816,212.36 over and above the amount of said prior charges.

That the total net income of the defendant company for the six months ending December 31, 1907, applicable to the payment of said prior charges was the sum of $1,508,788.36, being a surplus of $414,031.16 over and above the amount of said prior charges for said six months.

That the total net income of the defendant company for the seven months ending January 31, 1908, applicable to the payment of said prior charges was the sum of $1,688,949.61, being a surplus of $411,732.90 over and above the amount of said prior charges for said seven months.

That the total net income of the defendant company for the nine months ending March 31, 1908 (the months of February and March being approximated), is the sum of $1,931,564.92, being a surplus of $289,429.15 over and above the amount of said prior charges for said nine months.

That an estimated statement of the total net income of the defendant company for the year ending June 30, 1908, based on the operations for the nine months ending March 31, 1908, would show total net income applicable to the payment of said prior charges of $2,575,419.89, or a surplus of $385,905.49 over and above the amount of said prior charges for said fiscal year.

That the monthly proportion of the amount of said prior charges is the sum of $182,459.53 and that the total net income applicable thereto for the six months ending October 1, 1907, separately stated as to months, is as follows:

Month.	Net income.	Surplus.
April	$273,761.96	$91,302.43
May	300,959.05	118,499.52
June	379,654.35	197,194.82
July	249,655.12	67,195.59
August	299,848.91	117,389.38
September	262,217.60	79,758.07
Total for said 6 months	1,766,096.99	671,339.81

Your petitioner further alleges and shows that it appears from a communication addressed to the board of directors of the defendant company under date of March 4, 1908, by the president of said company, being the same person who is the receiver heretofore appointed in this cause, and which said communication is set forth in full in the bill of complaint herein, that the gross revenues of the defendant company for the six months ended December 31, 1907, increased $540,725.32, or 20.332 per cent, and the net revenues of the defendant company increased $350,176.18, or 30.224 per cent, over those of the corresponding period of the previous fiscal year.

Twentieth. Your petitioner further alleges that if the subordinate interest and lien represented by said general lien and convertible mortgage of the defendant company were capitalized and valued in accordance with the net revenues of the defendant company applicable to the payment of interest upon said general lien and convertible mortgage bonds as shown for the periods hereinbefore set forth, the value and worth of the mortgaged estate of said general lien and convertible mortgage is believed to be in excess of the par amount of the bonds issued and outstanding under said general lien and convertible mortgage.

Twenty-first. Your petitioner further alleges that by reason of the provisions of said first mortgage, hereinbefore mentioned and referred to, the trustee thereunder would in the event of default in the payment of interest maturing upon said bonds be entitled to enter upon and take possession of any portion of the property or premises covered by and embraced in said mortgage and also covered by and embraced in said general lien and convertible mortgage, and separate and disassociate the same from the operation and management of said mortgaged premises, thereby disturbing the unity of said premises and greatly impairing and reducing the value and earning capacity thereof, and your petitioner further alleges that in the event of the foreclosure of said general lien and convertible mortgage such foreclosure must be subject to all prior encumbrances, including the lien of said first mortgage, and that the lien of said general lien and convertible mortgage of the defendant company is a subordinate interest to the lien of said first mortgage and that your petitioner, as trustee of said general lien and convertible mortgage, and the holders of all bonds issued thereunder are vitally interested in the preservation of the subordinate lien and interest of said general lien and convertible mortgage which, as your petitioner is informed and believes, is of great value, and it is to the interest of your petitioner that the same be not impaired or destroyed as the consequence of an unnecessary precipitation of the maturity of the first mortgage bonds of the defendant company or of any action or proceeding brought for the foreclosure of said first mortgage.

Twenty-second. Your petitioner further alleges that the peril to the trust represented by it as trustee of said general lien and convertible mortgage is so great that your petitioner is willing, and the holders of a majority in amount of said general lien and convertible mortgage bonds have expressed in writing their willingness, that the future earnings of the railroads and property of the defendant company in the possession of the receiver in this cause and impounded by the bill of complaint of this petitioner, instead of being applied to the

payment of the principal or interest of said general lien and convertible mortgage bonds, shall be primarily applied to the preservation of the general interest of the holders of said general lien and convertible mortgage bonds by preventing the maturity of the first mortgage of said defendant company or the foreclosure of the same, and that any money borrowed to avert such a contingency shall be a charge upon and paid out of the corpus of the railroads and property covered by and embraced in said general lien and convertible mortgage before any claims of the holders of said general lien and convertible mortgage bonds either for the payment of the principal thereof or interest thereon and that any money so borrowed and applied for such purpose may be secured by a charge and a burden upon the subordinate interest represented by said general lien and convertible mortgage both as to the corpus of said property and as to the incomes and revenues derived therefrom.

Twenty-third. Your petitioner further shows that one of the purposes, if not the principal purpose, of the application for the appointment of a receiver herein was to preserve and protect the property covered by said general lien and convertible mortgage as a going concern so that its earning capacity could be fully maintained and preserved to the end that the value of the trust estate of said general lien and convertible mortgage might be best maintained and conserved and its earning capacity be continued for the benefit of the holders of said general lien and convertible mortgage bonds, as well as for the benefit of the holders of all prior and subsequent liens and charges, and that such purpose can be best accomplished, as your petitioner is informed and believes, by avoiding and preventing any default by the defendant company in any covenant or provision contained in its first mortgage or any of said underlying mortgages which would permit or allow such action by the trustees of any of said mortgages resulting in a dismemberment and disintegration of the mortgaged railroads and property and impairment or destruction of the earning capacity thereof.

Twenty-fourth. Your petitioner further alleges upon information and belief that the net revenues and income of the mortgaged property and premises arising from time to time will provide ample and sufficient funds to pay and discharge all interest upon underlying bonds and other fixed charges—except the interest installment maturing upon said first mortgage bonds on April 1, 1908—without the necessity of resorting to the borrowing of funds by said receiver for that purpose and will also be amply sufficient to meet and pay any interest which may become due and payable upon any certificates which may be issued by the receiver, as herein prayed, after paying and discharging all necessary operating expenses, taxes, costs of receivership and other charges in connection with the operation and management of the trust estate.

Twenty-fifth. Your petitioner further alleges that in and by the terms of said general lien and convertible mortgage it is provided that the defendant company may, at any time before full payment of said general lien and convertible mortgage bonds and whenever it may deem it expedient for the better protection and security of said bonds, surrender and deliver to the trustee of said general lien and convertible mortgage full possession of the whole or any part of the property, premises, and interests conveyed thereby, and that said

mortgage further provides that in the event of default in the payment of interest upon said general lien and convertible mortgage bonds in accordance with the terms thereof the trustee may forthwith enter into possession of all or any part of the railroads, property, franchises, and premises conveyed by said mortgage and that in the event of possession being taken or had by the trustee under either of the methods prescribed in said mortgage as above stated said trustee is empowered to collect and receive all tolls, earnings, incomes, rents, issues, and profits of said mortgaged premises and to make all payments which would constitute charges prior to the payment of the principal or interest of said general lien and convertible mortgage bonds, which prior charges would include interest upon the first mortgage bonds of the defendant company; and your petitioner further alleges that in and by said general lien and convertible mortgage it is provided that upon filing a bill in equity or upon other commencement of judicial proceedings by the trustee of said mortgage said trustee shall be entitled to the appointment of a receiver of the mortgaged premises and of the tolls, earnings, and revenues thereof, and to the application by such receiver of the net income of said mortgaged premises in accordance with the trusts set forth and prescribed in said mortgage.

Twenty-sixth. Your petitioner further alleges and shows, upon information and belief, that it is for the best interests of the trust estate in the possession of the receiver herein that said receiver be authorized and empowered to borrow a sufficient sum of money to satisfy and discharge the instalment of interest maturing on April 1, 1908, upon the first mortgage bonds of the defendant company, said instalment of interest amounting to $850,360, and to charge the net earnings and revenues of said company, as well as the corpus of the trust estate of said general lien and convertible mortgage, for the repayment of the same, and your petitioner alleges and shows that by so doing and by avoiding a default in the payment of said instalment of interest upon said first mortgage bonds and its necessary consequences, the amount of the lien imposed by reason of such borrowing would be equivalent solely to the amount of the lien satisfied and discharged by the payment of said interest instalment upon said first mortgage bonds, and that such action would further prevent the necessary costs and expenses incident to the foreclosure of said first mortgage for failure to pay said instalment of interest or to any action taken by the trustee thereunder upon such default.

Your petitioner further alleges that the situation as set forth in this petition is, in the opinion of your petitioner, of such vital importance to the holders of general lien and convertible mortgage bonds, represented by your petitioner, as trustee, that your petitioner would be grossly derelict in the discharge of its duties upon the facts and information possessed by it if it stood idly by and permitted the interest upon said first mortgage bonds to go unpaid without fully advising and informing the court of the situation and making application as herein prayed.

Twenty-seventh. Your petitioner further alleges that any claims which may be pending against the defendant company, the holders whereof may insist that the same are entitled to priority over any and all mortgages upon all or any portion of the railroads and property of the defendant company, can not be affected by the application of future earnings to prevent and avoid a default on the first mortgage

bonds of the defendant company for the reason that if the said claims or any of them shall finally be sustained and adjudged to be preferential claims the holders thereof will be entitled to the payment of the same, as such preferential claims, out of the corpus of the property upon any sale pursuant to foreclosure decree prior to the payment of the claims of the holders of any bonds under any of said mortgages upon the railroads and property of the defendant company.

Twenty-eighth. Your petitioner further alleges that heretofore and on or about the 11th day of March, 1908, the receiver appointed herein filed in this cause a petition setting forth the situation of the defendant company with reference to the coal lands and mining operations owned by the West Virginia Central and Pittsburg Railway Company, all of whose capital stock is deposited and pledged with the trustee of the first mortgage of the defendant company and is also a portion of the mortgaged and trust estate under the general lien and convertible mortgage of the defendant company; in said petition it is alleged that said coal properties and the revenues derived therefrom form a substantial and valuable portion of the security for the bonds of the defendant company issued under its said general lien and convertible mortgage, and that a large portion of the funds provided through the initial issue of said first mortgage bonds and of said general lien and convertible mortgage bonds of the defendant company was applied and used in the acquisition of said coal lands and mining operations through the purchase and acquisition of the capital stock of the West Virginia Central and Pittsburg Railway Company, the owner of said coal lands, and that the various persons and corporations, holders for value of said general lien and convertible mortgage bonds, purchased, acquired, and hold the same in consideration of the security afforded for the payment of said bonds, and the interest thereon, by said coal lands and mining operations, and the revenues to be derived therefrom.

That in and by said petition it was prayed, among other things, that said receiver be ordered and directed to continue, or direct the continuance, of the operation of said coal lands and mining operations, and to collect and receive the tolls, income, and earnings derived from such operation, and to pay and discharge all indebtedness necessarily contracted in connection therewith, and to hold and apply the surplus revenues resulting from such operation as a part of the mortgaged or trust estate in the possession of said receiver, subject to the further order and direction of this court.

That upon the filing of said petition an order was entered on the 11th day of March, 1908, by this court, and therein prayed, and said receiver was directed to hold and apply the surplus revenues resulting from the operation of said coal lands and mining operations as a part of the mortgaged or trust estate in the possession of said receiver, subject to the further order and direction of this court.

Twenty-ninth. Your petitioner further alleges that in its bill of complaint filed herein, reference is made to a certain act of Congress approved June 29, 1906, in which it is provided, among other things, as follows:

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity other than timber and the manufactured products thereof,

manufactured, mined or produced by it or under its authority, or which it may own or hold in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Thirtieth. Your petitioner further alleges, upon information and belief, that as soon as the act of Congress above mentioned becomes effective, to wit, on the 1st day of May, 1908, the Attorney-General of the United States contemplates the institution of appropriate proceedings to test the validity, constitutionality, and applicability of said act of Congress as affecting various common carriers engaged in the business of interstate commerce, to the end that an early and speedy determination of said questions may be had by the Supreme Court of the United States, so that due compliance and observance of said act of Congress, so far as the same is ultimately held to be applicable and enforceable, may be had by all corporations affected by the same. And your petitioner further alleges that in its judgment no steps or proceedings should be instituted or taken in this cause which would conflict with or prevent the speedy and early consummation of the plans and steps to be taken by the duly constituted authorities of the United States for the above purposes, or that would embarrass said authorities in the steps and proceedings so to be instituted and which might result in a confusion of orders and decrees.

Your petitioner is informed and believes that the following official announcement has been authorized by the Attorney-General of the United States and made by the Department of Justice:

What is generally known as the "commodities clause" of the Hepburn bill, approved June 29, 1906, reads as follows:

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

It is clear that this clause, if valid, will make it impossible for many railroads which own coal mines to transport the coal to market after the date named, and it is understood that some of these railroads have been advised by their respective counsel that the above quoted provision of law is unconstitutional. The Department of Justice contemplates the institution of proceedings as soon as possible after the date named whereby a prompt determination of this question by the Supreme Court of the United States may be obtained. It is expected that the railroads concerned will cooperate with the Government to this end, and if they do so in good faith, and if they in good faith and immediately obey the decision of the Supreme Court when rendered, it is not the purpose of the Department of Justice to prosecute them for a failure to comply with the terms of the act pending the decision of the Supreme Court.

Thirty-first. Your petitioner is advised that in the opinion of counsel said act of Congress is unconstitutional, and that, if held to be constitutional, the same is not applicable to the situation of the defendant company as disclosed by the record in this case. And your petitioner alleges that a more orderly and proper determination of the question can be had through proceedings instituted by the United States of America, as aforesaid, than by a precipitation of the question as affecting the conditions of the defendant company by other and different proceedings taken at the instance of your petitioner or of others interested in the affairs of the defendant company; and your petitioner further alleges that, pending the final determination of said question, it is of vital importance to the

holders of all mortgage bonds of the defendant company that the operation of said coal lands and mining operations and the results thereof be separated and segregated from the rest of the property of defendant company in the possession of the receiver herein, and specifically and separately set apart for the benefit of the holders of all of said mortgage bonds, and that a separate and distinct account of such operations be had and made to this court, and the net revenues resulting therefrom applied specifically for the benefit of the holders of all mortgage bonds of the defendant company and of any receiver's certificates that may be issued as hereinafter prayed through the application of said net revenues to the payment of the maturing interest upon said mortgage bonds and to the payment of any such receiver's certificates in proper order of priority. And your petitioner further alleges that, in the operation of said coal lands and mining operations, pending the final determination of the above question, it is practicable and advisable that the same should be operated as if they were separate and distinct and independent properties; and that it is entirely practicable that the said coal properties be operated under separate orders of this court relating solely to their management and operation as if the same were operated under entirely different and distinct ownership and management from the operation of the railroad properties in the possession of the receiver herein, as to the operation of which railroad properties separate and distinct orders of the court may be entered and separate and distinct accounts of operation made and filed by the receiver herein; and that the revenues of said properties may be separately stated and kept and separate and distinct accounts thereof rendered to this court.

Thirty-second. Your petitioner further alleges that inasmuch as the net revenues and income derived from the operation of said coal properties are, as your petitioner has alleged, a material and valuable part of the security for all mortgage bonds of the defendant company, including its first mortgage bonds, and will also form a substantial part of the security for any receiver's certificates which may be issued under the direction of this court as prayed by this petition, it is proper and right that said net revenues, as the same are accumulated from time to time, be paid into this court by said receiver and be held and applied to the extent thereof, primarily to the payment of the accruing interest upon said first mortgage bonds of the defendant company and of the interest and principal of any receiver's certificate which may be issued, as aforesaid, for the purpose of meeting and paying interest accruing upon said first mortgage bonds, and that the surplus (if any) over and above the amount necessary to meet said requirements be held and applied under the direction of this court to the payment of interest maturing upon the general lien and convertible mortgage bonds of the defendant company; and further, that if any surplus still remains, the same be held to be ultimately applied and disposed of pursuant to the further order and direction of this court.

Wherefore, your petitioner prays that the receiver herein may be ordered and directed to pay the interest maturing April 1, 1908, upon the outstanding first mortgage bonds of the defendant company, and that said receiver be authorized and empowered to borrow for said purpose a sufficient sum of money upon receiver's certificates maturing on or before September 30th, 1908, and bearing interest at the rate

of six per cent per annum, for the payment of the principal and interest of which certificates the future income and revenues of the railroads and property in the possession of the receiver, after paying operating expenses, taxes, rentals, interest upon underlying bonds, and other proper prior charges, shall be pledged; and that said certificates shall also be a lien upon the corpus of all the railroads, property, and franchises covered by and embraced in said general lien and convertible mortgage of the defendant company prior and superior in all respects to the lien of said general lien and convertible mortgage, but subordinate, however, to the lien of the first mortgage of said company and of said underlying mortgages, as hereinbefore set forth, and subordinate further to every other claim which shall ultimately be held entitled to priority of satisfaction out of the corpus of said property; and that the receiver heretofore appointed in this cause be ordered and directed to separately operate the coal properties and operations as at present constituted and as set forth in the record in this cause; and that until the further order of this court the said coal properties and coal business be and stand segregated and sequestered and be operated and carried on for and in the exclusive interest of your petitioner, as mortgagee, and the net revenues thereof be exclusively appropriated as hereinafter prayed, and to this end that said receiver keep and file separate and distinct accounts and reports of the operation of the same and use and apply the gross revenues arising from the operation of said coal properties to the payment of all necessary expenses of operation of the same and all taxes and proper charges in respect thereof, and deposit the amount of said revenues, from time to time, in separate accounts and as this court may direct; and that said net revenues so derived, as well as any net revenues arising from the operation of The Davis Coal and Coke Company, be separated and segregated from the net revenues arising from the operation of the railroads and other properties in the possession of the receiver herein; and that said net revenues of said coal properties be applied to the payment of the interest maturing upon the first-mortgage bonds of the defendant company as well as the payment of the principal and interest upon any receiver's certificates which may be issued as herein prayed, and the surplus, if any, as the court may by further order direct.

BOWLING GREEN TRUST COMPANY,
Trustee.

UNITED STATES OF AMERICA,
State of New York, County of New York, ss:

John A. Hilton, being duly sworn, deposes and says that he is vice-president of the Bowling Green Trust Company, the petitioner in the foregoing petition; that he signed said petition and caused the seal of said Bowling Green Trust Company to be attached thereto and was and is duly authorized so to do on behalf of said petitioner; that he has read the foregoing petition and knows the contents thereof, and the said petition is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

In the Circuit Court of the United States for the District of Maryland.

BOWLING GREEN TRUST COMPANY, TRUSTEE, COMPLAINANT, *vs.* WESTERN MARYLAND RAILROAD COMPANY, DEFENDANT.

Order.

Upon reading and filing the petition of the complainant herein asking that the receiver heretofore appointed in this cause be authorized and empowered to borrow a sufficient sum of money to pay the interest maturing April 1st, 1908, upon the outstanding first-mortgage bonds of the defendant company, and to issue therefor receiver's certificates, and for other relief; and on motion of counsel for the complainant, and the defendant, Western Maryland Railroad Company, appearing by counsel, and consenting to the entry of an order granting the relief therein prayed, and the court being satisfied, in view of said petition and of other facts appearing from the record herein, that it is a proper exercise of its discretion and power in the premises to authorize and direct the receiver to borrow money for the purposes stated in said petition, and to issue receiver's certificates and to grant the other and further relief prayed by said petition, and due deliberation being had, it is

Ordered, adjudged, and decreed by the court that—

The receiver heretofore appointed in this cause be and he is hereby empowered and authorized, in order to pay the interest maturing on April 1st, 1908, upon the outstanding first-mortgage bonds of Western Maryland Railroad Company, and for no other purpose, to make and issue his certificates of indebtedness as such receiver, all of the same date, to an amount not exceeding in the aggregate the sum of eight hundred and fifty thousand dollars ($850,000); that said certificates shall be made payable to bearer, principal and interest being payable in gold coin of the United States of the present standard of weight and fineness, at the city of New York, and shall bear interest at the rate of six per cent per annum, and be payable in monthly installments of one hundred and forty thousand dollars ($140,000) on the 30th day of April, and of a like sum on each succeeding 30th day of May, June, July, and August, and one hundred and fifty thousand dollars ($150,000) on the 30th day of September, 1908, from the date thereof, or sooner under the order of this court; and said certificates may be sold or negotiated for not less than the par value thereof, and shall be secured as to the payment of the principal and interest thereof by a first and paramount lien upon the future income and revenues of the railroads and property in the possession of the receiver after paying operating expenses, taxes, rentals, interest upon underlying bonds and receivership expenses, prior to any lien upon said revenues of the general lien and convertible mortgage of the defendant company, or of the holders of bonds secured thereby and also as to the revenues accruing subsequent to the date of said certificates and before the respective dates of their maturity a prior and paramount lien, and further, shall constitute a lien upon the corpus of all the railroads, property, and franchises covered and embraced in said general lien and convertible mortgage of the defendant company prior and superior in all respects to the lien of the said general lien and convertible mortgage, but subordinate, however, as to the corpus of

said property to the lien of the first mortgage of the defendant company and of the underlying mortgages in said petition set forth, and subordinate further to any other claim which shall ultimately be held entitled to priority of satisfaction out of the corpus of said property; that such certificates shall be issued in such numbers and in such amount of each certificate as in the receiver's discretion will best subserve the object to be accomplished, and that the funds realized upon the sale and negotiation thereof shall be applied by said receiver solely to the payment of the interest maturing April 1st, 1908, upon the outstanding first-mortgage bonds of the defendant company and that said certificates shall be in the form hereto annexed; and upon fully carrying out the foregoing directions of this order the receiver shall file his report of his doings thereunder.

It is further ordered, adjudged, and decreed that, until the further order and direction of this court, the coal properties and coal business of the defendant company, as the same is described in said petition and as set forth in the record of this cause, be separately operated and be and stand segregated and sequestered and be operated and carried on for and in the exclusive interest of the petitioner as mortgagee, and the net revenues thereof, as well as any net revenues arising from the operation of the Davis Coal and Coke Company, be separated and segregated from the net revenues arising from the operation of the railroads and other properties in the possession of the receiver herein; and that said net revenues of said coal properties and coal business be applied to the payment of the interest maturing upon the first mortgage bonds of the defendant company, as well as the payment of the principal and interest upon any receiver's certificates issued as herein authorized, and the surplus, if any, as this court may by further order direct; and that, to this end, said receiver keep and file separate and distinct accounts and reports of the operation of the same, and use and apply the gross revenues arising from the operation of the coal properties and coal business to the payment of all necessary expenses of operation of the same and all taxes and proper charges in respect thereof, and that the amount of said revenues be deposited from time to time in separate accounts and as this court may direct; and, further, that said net revenues accruing prior to the date of maturity of the receiver's certificate issued as by this order authorized be primarily applied to the payment and satisfaction of the principal and interest of said receiver's certificates.

THOS. J. MORRIS, *Judge.*

MARCH 27, 1908.

No. —— $——

Western Maryland Railroad Company. Receiver's Certificate.

This is to certify that the undersigned, Benjamin F. Bush, as receiver of the railroads and property of Western Maryland Railroad Company, heretofore appointed in a certain cause pending in the circuit court of the United States for the district of Maryland wherein Bowling Green Trust Company, trustee, is a complainant, and Western Maryland Railroad Company is defendant, which is numbered 32 on the docket of said court, and also as receiver of the property of Western Maryland Railroad Company, heretofore appointed in a

certain cause pending in the circuit court of the United States for the district of Maryland wherein Bowling Creek Trust Company is complainant and Western Maryland Railroad Company is defendant, which is numbered 33 on the docket of said court, and not individually is, for value received, indebted to the bearer hereof in the sum of ——— dollars, payable in gold coin of the United States of the present standard of weight and fineness at the city of New York on ———, or sooner as hereinafter provided, with interest thereon from the date hereof at the rate of six per cent per annum, payable on ——— 30, 1908, or upon the prior payment of the principal hereof in like gold coin. This certificate is part of an issue of sundry certificates of like tenor and date and in varying amounts, not exceeding in the aggregate the sum of eight hundred and fifty thousand dollars ($850,000), and serially numbered, authorized by orders entered by the United States circuit court for the district of Maryland, in the causes above mentioned, on the twenty-seventh day of March, nineteen hundred and eight, and represents a part of the certificates authorized by said orders to be made and issued by the undersigned, as receiver as aforesaid, and of the loan represented thereby, for the purpose of paying the interest maturing April first, nineteen hundred and eight, upon the outstanding first mortgage bonds of Western Maryland Railroad Company, by the terms of which orders said loan and the certificates issued in representation thereof are declared to be secured as to the payment of the principal and interest thereof by a lien upon the net revenues of the property in the possession of the receiver prior and paramount to any lien upon said revenues of the general lien and convertible mortgage of said company, and as to said net revenues accruing subsequent to the date of this certificate and before the date of its maturity by a prior and paramount lien, and further, are secured by a lien upon the corpus of all the railroads, property, and franchises covered and embraced in said general lien and convertible mortgage prior in all respects to the lien of said general lien and convertible mortgage, but subsequent, however, as to the corpus of said property to the lien of said first mortgage and to any other claim which shall ultimately be held entitled to priority of satisfaction out of the corpus of said property. This certificate may be paid before maturity under the direction of said court. This certificate and all rights and lien thereunder shall be transferable by delivery.

In witness whereof the said undersigned receiver has, pursuant to the orders of the court hereinbefore recited, hereunto set his hand and seal the first day of April, nineteen hundred and eight.

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As Receiver of the Property of Western Maryland Railroad Company, as aforesaid.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 479.

ORDINANCE OF EXECUTIVE COUNCIL OF PORTO RICO AMENDING FRANCHISE GRANTED TO W. S. H. LOTHROP, SO AS TO EXTEND TIME FOR CONSTRUCTION OF ELECTRIC STREET RAILWAY AT PONCE.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A COPY OF AN ORDINANCE AMENDING AN ORDINANCE PASSED BY THE EXECUTIVE COUNCIL OF PORTO RICO APRIL 19, 1907, ENTITLED "AN ORDINANCE SUPPLEMENTARY TO AN ORDINANCE ENTITLED 'A FRANCHISE GRANTING TO W. S. H. LOTHROP, HIS HEIRS, SUCCESSORS, AND ASSIGNS, THE RIGHT TO CONSTRUCT AND OPERATE AN ELECTRIC STREET RAILWAY IN CERTAIN STREETS IN THE CITY OF PONCE AND BETWEEN THE CITY OF PONCE AND THE PLAYA THEREOF,' PASSED BY THE EXECUTIVE COUNCIL ON THE 27TH DAY OF FEBRUARY, 1901."

MAY 14, 1908.—Read; referred to the Committee on Pacific Islands and Porto Rico and ordered to be printed.

To the Senate and House of Representatives:

In accordance with section 32 of an act of Congress entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, and section 2 of the joint resolution amending said act, approved May 1, 1900, I transmit herewith copy of an ordinance amending an ordinance passed by the executive council of Porto Rico April 19, 1907, entitled "An ordinance supplementary to an ordinance entitled 'A franchise granting to W. S. H. Lothrop, his heirs, successors, and assigns, the right to construct and operate an electric street railway in certain streets in the city of Ponce and between the city of Ponce and the playa thereof,' passed by the executive council on the 27th day of February, 1901."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *May 14, 1908.*

AN ORDINANCE Amending an ordinance passed by the Executive Council of Porto Rico April 19, 1907, entitled "An ordinance supplementary to an ordinance entitled 'A franchise granting to W. S. H. Lothrop, his heirs, successors, and assigns, the right to construct and operate an electric street railway in certain streets in the city of Ponce and between the city of Ponce and the playa thereof,' passed by the Executive Council on the 27th day of February, 1901."

Be it ordained and enacted by the executive Council of Porto Rico.

SECTION 1.—That the period of time within which the construction of a line of electric street railway from the Playa de Ponce, Porto Rico, to a point near what is known as "Penoncilla Point" on the lands of the Ponce Railway and Light Company, where it is proposed to construct a wharf, or pier, and other structures, must be completed in accordance with the provisions of an ordinance passed by the Executive Council April 19, 1907, entitled "An ordinance supplementary to an ordinance, entitled: 'A franchise granting to W. S. H. Lothrop, his heirs, successors and assigns, the right to construct and operate an electric street railway in certain streets in the city of Ponce and between the city of Ponce and the Playa thereof,' passed by the Executive Council on the 27th day of February, 1901," is hereby extended for the period of one year from the time limited in said ordinance.

SEC. 2. That the Ordinance heretofore passed by the Executive Council of Porto Rico authorizing the construction of the said line of electric street railway shall remain and be in full force and effect as to all of its terms and conditions, with the exception of the modification hereby made in the time for the completion of the said l ne of railway.

Done in open session of the Executive Council of Porto Rico, this sixteenth day of April, 1908.

(Signed) W. F. WILLOUGHBY,
President of the Executive Council.

Approved this 20th day of April, 1908.

(Signed) REGIS H. POST,
Governor of Porto Rico.

Approved this 11th day of May, 1908.

THEODORE ROOSEVELT,
President of the United States.

THE PEOPLE OF PORTO RICO.

OFFICE OF THE SECRETARY.

I, W. F. Willoughby, secretary of Porto Rico, do hereby certify that the foregoing two printed pages are a true copy of an ordinance entitled "An ordinance amending an ordinance passed by the executive council of Porto Rico April 19, 1907, entitled 'An ordinance supplementary to an ordinance entitled 'A franchise granting to W. S. H. Lothrop, his heirs, successors, and assigns, the right to construct and operate an electric street railway in certain streets in the city of Ponce and between the city of Ponce and the playa thereof,' passed by the executive council on the 27th day of February, 1901,'" as the said ordinance appears upon the official record in my custody of the

proceedings of the executive council of Porto Rico at a meeting held on the 16th day of April, A. D. 1908. I further certify that the said ordinance was duly approved by the governor of Porto Rico on the 20th day of April, A. D. 1908, as appears by the official records in this office.

In witness whereof I have hereunto set my hand and the great seal of Porto Rico, at the capital, on this 21st day of April, in the year of our Lord nineteen hundred and eight, and of the independence of the United States the one hundred and thirty-third.

[SEAL.] W. F. WILLOUGHBY,
Secretary of Porto Rico.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 480.

TRUSTEES OF PRESBYTERIAN CHURCH, MACON, MO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE PRESBYTERIAN CHURCH OF MACON, MISSOURI, AGAINST THE UNITED STATES.

MAY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 13, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 12936. Trustees of the Presbyterian Church of Macon, Missouri, *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use of and damage to a church building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

" [S. 6449, Fifty-ninth Congress, first session.]

"A BILL For the relief of the trustees of the Presbyterian Church of Macon, Missouri.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Presbyterian Church of Macon, Missouri, the sum of six hundred dollars, for the use of and damage to their church property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 25th day of April, 1907, and filed their petition, in which it is substantially averred:

That during the years 1863 and 1864 the military forces of the United States, consisting of the Ninth Missouri Cavalry, Forty-second Missouri Infantry, Seventh Iowa Cavalry, First Iowa Infantry, and Col. John F. Williams, used and occupied for

military purposes the church building belonging to the Presbyterian Church of Macon, Mo.

That during said occupation the pews, pulpit, and furniture were destroyed and the doors, windows, floor, plastering, and weatherboarding partially destroyed.

That the reasonable rental value of said building during the period it was so occupied, including the repairs necessary to restore the building to the condition in which it was at the time the said military forces took possession, was the sum of $600, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 4th day of May, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by M. L. Blake, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimants, none having been adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Presbyterian Church of Macon, Mo., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said period the military forces of the United States, by proper authority, took possession of the church building described in the petition and used and occupied it as a barracks and commissary, and damaged the same. The reasonable rental value of such use and occupation, together with the damages thereto in excess of ordinary wear and tear, was then and there the sum of six hundred dollars ($600), no part of which appears to have been paid.

III. The claim herein was presented to the Quartermaster-General under the act of July 4, 1864, and by that officer disallowed on the ground of the disloyalty of the congregation of this church. Thereafter the claim was presented to Congress and by resolution of the United States Senate referred to this court under the provisions of the act of March 3, 1887, as set forth in the statement of the case herein.

By the Court.

Filed May 11, 1908.
A true copy.
Test this 13th day of May, 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 481.

TRUSTEES OF HARPETH ACADEMY, FRANKLIN, TENN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF HARPETH ACADEMY OF FRANKLIN, TENNESSEE, AGAINST THE UNITED STATES.

MAY 14, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 13, 1808.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHAS. W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13001. Trustees of Harpeth Academy, of Franklin, Tenn., v. the United States.]

STATEMENT OF CASE.

This is a claim for the use and destruction of an academy building by the military forces of the United States during the late civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7081, Fifty-ninth Congress, second session.]

"A BILL For the relief of the trustees of Harpeth Academy, of Franklin, Williamson County, Tennessee.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of Harpeth Academy, of Franklin, Williamson County, Tennessee, the sum of ten thousand dollars, for use and destruction of their academy property by the military forces of the United States during the late civil war."

The claimants appeared in this court on the 24th day of August, 1907, and filed their petition in which it is substantially averred:

That during the late civil war, and in the fall of 1863, the military forces of the United States, under command of Gen. Gordon Granger, took possession of the college building of the Harpeth Academy at Franklin, Tenn., and used and occupied

the same for military purposes. That during the occupation thereof the said building was destroyed by fire. That thereafter the said military forces of the United States removed the brick and other material in said building which were not destroyed by the fire and appropriated the same to the use of the Army in the construction of buildings, etc. That said building at the time of its destruction as aforesaid was reasonably worth the sum of $10,000, no part of which has ever been paid.

The case was brought to a hearing on loyalty and merits on the 4th day of May, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by George E. Boren, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimant, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, make the following

FINDINGS OF FACT.

I. Harpeth Academy, of Franklin, Tenn., as an organization, was loyal to the Government of the United States throughout the late civil war.

II. During said war and while the military forces of the United States were in possession of the building described in the petition and using the same as a barracks for troops (the building having been used and occupied as an academy for school purposes) the same was burned and destroyed. The evidence does not disclose the origin of the fire, nor whether accidental or otherwise. The reasonable value of the building so destroyed at the time and place was the sum of forty-five hundred dollars ($4,500), no part of which appears to have been paid.

III. The claim herein was never presented to any officer or Department of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no reason is adduced showing why the claim was not earlier presented.

BY THE COURT.

Filed May 11, 1908.
A true copy.
Test this 13th day of May, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 482.

JOINT RESOLUTION FOR THE ENROLLMENT OF CERTAIN PERSONS AS MEMBERS OF THE OSAGE TRIBE OF INDIANS, AND FOR OTHER PURPOSES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ON JOINT RESOLUTION 70

WASHINGTON, D. C.
WEDNESDAY, APRIL 29, 1908

MAY 15, 1908.—Presented by Mr. Clapp and ordered to be printed.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

COMMITTEE ON INDIAN AFFAIRS.

SIXTIETH CONGRESS.

MOSES E. CLAPP, *Chairman.*

PORTER J. MCCUMBER.
ROBERT J. GAMBLE.
GEORGE SUTHERLAND.
FRANK B. BRANDEGEE.
ROBERT M. LA FOLLETTE.
CHARLES CURTIS.
NORRIS BROWN.
JOSEPH M. DIXON.
WILLIAM J. STONE.
JEFF DAVIS.
THOMAS PAYNTER.
ROBERT L. TAYLOR.
ROBERT L. OWEN.
JOHN H. BANKHEAD.

LEE F. WARNER, *Clerk.*

JOINT RESOLUTION FOR THE ENROLLMENT OF CERTAIN PERSONS AS MEMBERS OF THE OSAGE TRIBE OF INDIANS, AND FOR OTHER PURPOSES.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
April 29, 1908.

The committee met at 1.30 p. m.

Present: Senators Clapp (chairman), Gamble, Sutherland, Brandegee, Curtis, Brown, Dixon, Paynter, Taylor, Owen, and Bankhead.

Messrs. L. J. Miles, J. J. Hemphill, T. J. Leahy, Charles J. Kappler, and Charles H. Merillat were in attendance.

The CHAIRMAN. This hearing is in regard to Senate resolution 70, introduced by Mr. Gore, of Oklahoma.

Senator OWEN. Mr. Chairman, I have the resolution and the report from the Department concerning the same, and all the Department papers, and I ask that they be printed at the beginning of the record.

The CHAIRMAN. They will be received and printed as requested.

The papers referred to are as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 31, 1908.

Hon. MOSES E. CLAPP,
Chairman Committee on Indian Affairs, United States Senate.

SIR: I am in receipt of your letter referring for a report a copy of S. R. 70, being a "Joint resolution for the enrollment of certain persons as members of the Osage tribe of Indians, and for other purposes." You request a report thereon for the information of your committee.

The resolution authorizes and directs the Secretary of the Interior to cause to be placed on the roll of the Osage tribe of Indians, provided for in the act of June 28, 1906 (34 Stat .L., 539), known as the Osage allotment act, the names of 37 persons, as follows:

1. Mrs. Jane Appleby.
2. Addie May Auld.
3. Archie William Auld.
4. Harry Auld.
5. Flora Auld.
6. Pearl Callahan.
7. Simon Clavier.
8. Mary J. R. Crump.
9. Pauline Crump.
10. Edward R. Crump.
11. Maudie Fronkier.
12. Panzy Fronkier.
13. Virgil Herrard.
14. George Arthur Hunt.
15. John Thomas Hunt.
16. Thomas John Hunt.
17. Mary Elizabeth Hunt.
18. Rhody May Hunt.
19. William T. Hunt.
20. Angeline James.
21. Nora James.
22. Chlora Loveland.
23. Hattie McCrary.
24. Mamie McCrary.
25. Rosa Marr.
26. Ola Martin.
27. Blon Pappan.
28. Justin Pappan.
29. Moses Plomondon.
30. Peter M. Revard.
31. G. J. Stratton.
32. Jerald Stratton.
33. Theresa Stratton.
34. Therma Stratton.
35. Floyd Stratton.
36. Grace Stratton.
37. Thelma Stratton.

The resolution provides further:

"And in order that said persons may receive benefits from the Osage lands equal to other members of the tribe, the Secretary of the Interior is authorized and directed to ascertain and pay to each of them the difference in value between the allotments they

may receive and that of the average allotments to other members of said tribe, and the Secretary of the Interior is hereby empowered and directed to use so much of the funds of the Osage tribe as may be necessary to pay the difference in the value of the allotments and to give the persons named herein equal benefits in every respect with other members of said tribe."

Agreeably to your request, the cases are considered seriatim, as follows:

JANE APPLEBY (NO. 1).

The facts show that Jane Appleby is a white woman of Irish descent, 75 years old, who came with her parents to the Osage country in January, 1833, and in 1847 was married to a half-breed Osage Indian named August Captain, and it is claimed she was placed upon the roll of the Osage Indians by its council on March 5, 1847. Her name appears to have remained there until 1874, when it was dropped for some reason not given. August Captain is alleged to have died on August 8, 1878, and after about fourteen years the contestee married one Luther Appleby, a white man.

The records of the Department show that this woman, of far more intelligence than the average Osage Indian, had by reason of her lifetime spent among the Osages, acquired an extensive knowledge as to what persons living in the Osage Nation were entitled to enrollment and who were simply white intruders; that her evidence during the various investigations held for the purpose of ascertaining those entitled to tribal enrollment was extremely valuable in deciding the rights of the many applicants for enrollment, and that she did a great deal to prevent the enrollment of persons who were not properly entitled.

It appears also that the name of Mrs. Appleby was submitted to the Osage council for consideration on November 28, 1904, and the council voted unanimously against her. Her application was then brought to the attention of the Department, which felt that the tribe owed her a debt of gratitude, and on March 25, 1905, directed that the papers be returned to the agent, with the suggestion that the Osage council, in view of the many valuable services rendered by Mrs. Appleby, admit her to the rolls to share in the quarterly cash annuities during the remainder of her lifetime. The agent, acting in accordance with the instructions, submitted the matter to the council on June 12, 1905, and fully explained the feeling of the Department; but the council refused to consent to the placing of the name of Mrs. Appleby upon the Osage roll.

The case was considered by the Department, which on August 12, 1905, directed that the applicant be enrolled "to share in the quarterly cash annuities of the Osage tribe during the remainder of her lifetime, with the understanding that such annuities or enrollment shall not give her any of the rights and privileges enjoyed by the full members of the tribe, or that shall hereafter be enjoyed by such members, nor shall give her any back annuities or an allotment of land as an Osage Indian."

In accordance with this authority the name of Jane Appleby was placed upon the annuity roll of the Osage Nation for the purpose of receiving annuities.

The act of June 28, 1906 (34 Stat. L., 539), provides, inter alia:

"That the roll of the Osage tribe of Indians as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Okla., * * * is hereby declared to be the roll of said tribe and to constitute the legal membership thereof."

On October 21, 1907, the Secretary of the Interior approved a recommendation from the Indian Office that Jane Appleby be not permitted to have any share in the final division of the lands and moneys of the Osage tribe of Indians, but that she be permitted, in accordance with the action of the Department on August 12, 1905, to receive annuities from the tribe during the remainder of her lifetime. The reasons for the conditional enrollment were to the effect "that under the act of June 28, 1906, the roll of the Osage tribe of Indians consisted of those names which were shown to be entitled to be thereon by the records of the United States in the office of the United States Indian agent at the Osage Agency, Okla., and that departmental instructions of August 12, 1905, were a part of such records, and it was shown by them that Jane Appleby was granted permission to share only in the quarterly cash annuities of the Osage tribe during the remainder of her lifetime, with the understanding that such annuities or enrollment should not give her any of the rights and privileges enjoyed by the full members of the tribe or that should hereafter be enjoyed by them, nor should it give her back annuities or an allotment of land as an Osage Indian."

On November 23, 1907, the Department denied a motion for a review in this case, holding that the same contentions substantially were presented in the motion for a review that had been theretofore considered at the time of departmental action of October 21, 1907.

It is shown that the Osage council on two occasions refused to enroll Mrs. Appleby and that since that time no favorable action upon her application has been taken. The action of the council was overruled by the Department for the reasons cited, so far as to permit her to share in the annuities, but it was clearly not its intention to place her on the rolls as a full member of the Osage tribe, and as she is not shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Okla., to be upon the roll of the Osage tribe of Indians—that is, to be one entitled to be listed as a full member of the tribe—she is not now entitled to enrollment under the act of June 28, 1906.

The Department considers that to place the name of Jane Appleby, a white woman, the widow of a white man, who has been for thirty-four years unable to procure recognition by the tribe, upon the tribal roll in accordance with the provisions of S. R. 70 would be to do a grievous wrong to the Osage people.

MRS. ISABELLA AULD FOR HER FOUR MINOR CHILDREN, ADDIE MAY, ARCHIE WILLIAM, HARRY, AND FLORA AULD (NOS. 2 TO 5, INCLUSIVE).

The Osage Indian agent, to whom this woman applied for the enrollment sought, thoroughly investigated her case and reported January 31, 1907, that, although given ample opportunity, she failed to furnish sufficient evidence legally to establish her claim of Osage blood; that she was enrolled and allotted land as a Kaw Indian; that she had never affiliated with or been recognized by the Osages as a member of their tribe, and that their national council rejected her application.

The records showed that she was an enrolled member of the Kaw tribe, and was allotted 396.40 acres of land on the Kaw Reservation under the act of July 1, 1902 (32 Stat. L., 636), which limited allotments to enrolled members of the tribe on December 1, 1901. Her minor children, born thereafter, did not receive land, and their rights of course follow the status of their mother as Kaws.

As the mother failed legally to establish Osage blood, or that her children had been affiliating with and recognized by the Osage tribe, which refused through its council to admit them, the Department, on April 16, 1907, denied the application.

Dr. H. M. Hamblin on March 23, 1908, filed an affidavit to the effect that he personally knows the applicant to be a full cousin of Weso Pappan, an eighth-blood Osage. Though she has failed to establish Osage descent as indicated, it seems that she is probably of mixed Osage and Kaw Indian blood.

As the mother elected to take her rights with the Kaws and received her pro rata share of the tribal funds and lands as an Indian, and as it is shown that her children, of probably a small degree of Osage blood, have never been affiliated with or recognized by the Osage tribe, I do not see that they have such rights in the tribe as would entitle them to share in its communal estate, especially over protest.

PEARL CALLAHAN (6).

In 1901 Mrs. Callahan (née Mrs. Gussman), a white woman, applied for the enrollment with the Osages of her child Pearl, born July 10, 1895, and the case was submitted by the Indian Office on May 24, 1901, for the consideration of the Department. In submitting the case it was said briefly that the child was clearly shown to be the daughter of She-she, a full-blood Osage Indian and an enrolled member of the tribe; that the mother, who, when 17 years of age, was seduced by him while her parents were absent from home, was a woman of good reputation and desired the enrollment of the child for the purpose of properly providing for its rearing and education; that the father, who admitted the child to be his, was willing to have it enrolled if she would give it to him or permit him to raise it, and that the Osage council, which refused to sanction its enrollment, did so on the ground of illegitimacy, but said that it would agree to the enrollment of the child if its mother would let She-she have it or should she be willing to live with him as his wife. It was said also that the mother refused to do either, and that the facts and equity in the case clearly justified the enrollment of the child.

The Department declined to sanction the enrollment for the reasons "that it would not only be against public policy to admit the applicant to enrollment with the Osage Nation, but also in contravention of the rights of the nation to require it, without its consent, in fact, against its protest, to admit the child to communal interest in the lands, moneys, and other property of the tribe.

"Furthermore, the applicant seems to have been born in wedlock several months after the marriage and cohabitation of the mother with another than the alleged father, with whom there was no pretense of a tribal or other marriage of any sort, nor of any other than an unlawful and immoral and clandestine relationship."

On January 22, 1907, the Department approved an opinion of the Assistant Attorney-General of January 9, 1907, who held in effect that the scope of the provision of section 1 of the act of June 28, 1906 (34 Stat. L., 539), defining what should constitute the legal membership of the tribe, and directing the enrollment of all children born to Osage parents as therein specified, did not "permit illegitimate children who never lived with nor were recognized by nor affiliated with the Osage tribe to participate in the division of the communal lands and funds of the tribe."

The Department accordingly directed that she be not enrolled.

A motion for review was filed February 28, 1907, by Messrs. Kappeler & Merrilat, attorneys, and the case was again considered by the Department, with the result that on June 24, 1907, the Acting Secretary of the Interior adhered to the former action in the case for the same reasons as those given in the decision of January 22, 1907, heretofore mentioned. The motion was accordingly dismissed.

SIMON CLAVIER (NO. 7) AND VIRGIL HERRARD (NO. 13).

The applications of these persons were submitted on March 17, 1904, by R. V. Belt, an attorney, and were thoroughly investigated by the Osage agent.

The facts show that the persons named married members of the tribe and were, in 1874, enrolled therewith by Agent Gibson at the instigation of the chief of the Little Osage band; that the other bands of the Osages objected, and when Cyrus Beede became agent in 1878, requested that he strike their names from the tribal rolls, which was done, though neither agent reported his action to the Department; that Simon Clavier after the death of his Osage wife married a member of the Kaw tribe and made his home with her among the Kaws; and that the other applicant continued to reside on the Osage Reservation. It is shown also that the national council on November 28, 1904, unanimously and emphatically refused to sanction their enrollment with the tribe "on the ground that the applicants are white men and not entitled to share in the tribal benefits of the Osage Indians."

The Department on August 25, 1905, denied the applications and said: "There is nothing in the papers as presented which would justify the enrollment of the applicants after the refusal of the tribe to sanction their admission."

A review of the case fails to show such equity as would justify the giving, over the emphatic protest of the tribe as expressed through its council, of lands and funds from the Osage tribal estate to the white men named.

MRS. MARY J. R. CRUMP (NO. 8) AND HER CHILDREN, PAULINE CRUMP (NO. 9) AND EDWARD R. CRUMP (NO. 10), AND HER BROTHER, PETER M. REVARD (NO. 30); THE STRATTON FAMILY, CONSISTING OF SEVEN PERSONS (NOS. 31 TO 37, INCLUSIVE), CHLORA LOVELAND (NO. 22), AND HATTIE AND MAMIE M'CRARY (NOS. 23 AND 24, RESPECTIVELY).

The applications of Peter M. Revard and his sister were investigated by the agent and submitted to the council, which, on November 28, 1904, unanimously rejected them. From the history of the family it is shown that their father was Louis Revard, who was born in Missouri in 1828 of a quarter-blood Osage woman and a white man; that the family lived near Kansas City, Mo., until about 1858, thence going to California where Peter and his sister were born and reared and were residing at the time they asked for Osage tribal rights; and that the father and one daughter came to the Osage Reservation in 1890 and were admitted to membership by an act of the Osage national council which was approved by the Department March 25, 1902.

On April 4, 1905, the Department denied enrollment to the present applicants, who are of about one-sixteenth Osage blood, for the reasons that they "were all born in California among the whites and now live there, and, as far as Indian blood is concerned, are practically whites and have all their lives exercised the rights of citizens of the State of California, and have never in any way whatever been identified with the interests of the Osage Nation, or have shown that it is their intention to cast their lot with the Osages."

In the case of the Stratton family the facts show that in 1904 George J. Stratton applied for the enrollment of himself and three of his children, Theresa, Therma, and Jerald Stratton, and of his sister, Mrs. Rosa Loveland (née Stratton), for herself and her two children, Flora Loveland and Mrs. Mamie McCrary (née Loveland), and her grandchild, Hattie McCrary. The cases were investigated by the agent and submitted to the national council, which unanimously rejected the applications.

From the facts presented in the case of this family it appears that Gabriel M. Stratton (the father of George J. Stratton and Mrs. Rosa Loveland) married a half-breed Osage woman and left the tribe about 1857, going with her to California, where the children named were born, reared, and married among the whites, and that the appli-

cants up to the time of asking for tribal rights were residents of California and had never been affiliated or identified with the Osages.

The Department on March 28, 1905, denied their applications in view of the unanimous opposition of the tribal council to their admission and, "inasmuch as the present applicants have never affiliated with the tribe, are to all intents and purposes white persons, members of a white community, and not identified with the interests of the tribe, and have since their birth been citizens of the United States."

The cases of the Revard and Stratton families were subsequently reopened on a motion for review filed by Frank T. Crosthwaite, an attorney of this city, and were again investigated by the Indian agent and submitted to the Osage council, which again refused to sanction the admission of the applicants on the ground that no additional evidence had been furnished showing that they were entitled to tribal rights. The Department on December 3, 1907, adhered to its former adverse action in their cases and said:

"An examination of the record clearly shows that no additional material evidence has been furnished in support of the applications of these parties. It is not claimed that they ever affiliated with the tribe or were in any way identified with its interests. In fact, it seems to be admitted that they will remove to the reservation only in the event of favorable action upon their applications. It is now urged in their behalf that under laws and decisions they would not forfeit their rights with the tribe by living apart therefrom, and that they were prevented from affiliating with the tribe and residing on the reservation under section 2134 of the Revised Statutes. * * *

"As to the other contention made, the laws and usages of a tribe have always been recognized as potent factors in determining membership therein. * * *

"It was held in said case (William Banks, 26 L. T., 71) that Banks's tribal relations were completely severed so far as his own acts could accomplish that end; that all tribal property among the Indians is held as communal property; but under the general rule governing in the matter of community property one who withdraws from the community or association thereby forfeits all his interests in the common property, and that Banks gave up all right to share in the common property unless relieved from the effect of the general rule by legislation. Reference was then made to certain acts of Congress and it was held, Banks's mother being a member by blood of the tribe and recognized as such at the time of her death, that he was entitled to the benefits conveyed by said acts. It is shown that the applicants now under consideration were all born in California, now live there, and have all their lives exercised the rights of citizenship in that State. It was further held in the case of Banks, supra, that the case of his children presented a different question. Their father had severed his tribal relations before their births and hence they can not claim to have been born members of this tribe. Neither is it claimed that any one of them was ever considered and recognized as having membership therein. It was therefore held that they were not entitled to allotment. The rules laid down in that case are squarely against the contentions made herein."

MAUDIE FROWKIER (FRONKIER) AND PANZY FRONKIER (NOS. 11 AND 12, RESPECTIVELY), AND BLON AND JUSTIN PAPPAN (NOS. 27 AND 28).

The applications of Mitchell Fronkier and Weso Pappan to have their respective children named above enrolled as Osages were submitted to the agent and thoroughly investigated. The council of the tribe unanimously rejected the applications.

The facts show that these children are of Kaw and Osage blood; that their parents have always affiliated with and resided among the Kaws, and that they have not been considered or recognized as members of the Osage tribe. It is shown also that Weso Pappan, of mixed Kaw and Osage blood, and his wife and one child were allotted lands with the Kaws, as were Mitchell Fronkier, of similar Indian blood, and family, including his children, who were then living at the time the allotments were made, and that these persons received their distributive shares of the Kaw tribal estate, including allotments of land, and became citizens of the United States under the provisions of section 10 of the undated Kaw agreement, ratified by the act of Congress approved July 1, 1902. (32 Stat. L., 636.)

On April 15, 1907, the Secretary of the Interior decided that the applicants, who are of about one-sixteenth Osage blood, were not entitled to enrollment, for the reasons that they were citizens of the United States, having been born after their parents became citizens of the United States under the law mentioned, and that they had never affiliated with or been recognized by the Osage tribe as members thereof.

On August 6, 1907, Judge Joseph F. Cooper, an attorney of this city, filed a motion asking that the cases be reopened and that he be given an opportunity to submit a brief therein and be heard orally. As no new facts material to the case were introduced the Department on September 28, 1907, denied his request.

With letters of January 15, 16, 20, and 30, 1908, H. M. Hamblin filed, as attorney in fact, certain additional affidavits in the above cases; and was advised in response that as the applications had been finally passed on by the Secretary of the Interior, in accordance with the provisions of the act of June 28, 1906 (34 Stat. L., 539), which act also provided that such determination "shall be final," the cases could not be given further consideration.

The additional evidence has been examined and is found to be merely cumulative of the applicants having Osage and Kaw blood. It in no way affects the status of the matter.

THE HUNT FAMILY, CONSISTING OF SIX PERSONS (NOS. 14 TO 19, INCLUSIVE).

In 1901 John Thomas Hunt applied for the enrollment with the Osages of himself and his five minor children—William T., Thomas Jesse, Rhody May, Mary Elizabeth, and George Arthur Hunt. The applications were fully investigated by the Indian agent, who recommended that these persons be not admitted to membership for the reason that their Osage descent was not clearly established. It appears that John Thomas Hunt based his claim to Osage descent upon the fact that he is the son of Mrs. Elizabeth Hunt, formerly Elizabeth Javine, who is alleged to have been of Osage blood, and submitted as evidence in his case the alleged proof introduced by Mrs. Mary J. Clem (the daughter of Mrs. Elizabeth Hunt) when she was allowed to remain on the Osage rolls in 1891. It appears also that the names of Mrs. Mary J. Clem and family were included by the Osage national council in the list of persons charged with being unlawfully upon their tribal rolls; that in the investigation which followed in 1896, the Indian Office held that this family had no Osage blood and had gained admission to the tribal rolls by bribery and fraud. The Assistant Attorney-General for this Department, in his opinion of April 6, 1898, upon the case, decided that the Osage Nation bearing the burden of proof had failed to prove the charge that these persons had no Osage blood, and that the charges of bribery and fraud were not conclusively proven.

On July 23, 1901, the Department gave the case careful consideration and denied the application on the ground that John Thomas Hunt, on whom the burden of proof rested, failed to established his claimed Osage descent.

Under the provisions of the act of June 28, 1906, heretofore referred to, the principal chief of the Osage Nation prepared a list of persons whose enrollment as Osages was challenged by the tribe, and included in the list the names of the Clem family. The case was again considered by the Department, with the result that on November 6, 1907, it held that the evidence taken as a whole was of such character "that while it might be presumed therefrom that fraud was perpetrated in procuring the enrollment of these people, yet there is nothing sufficiently clear, direct, and convincing upon which to fairly predicate a finding that fraud was actually perpetrated."

The enrollment of Mrs. Mary J. Clem was accordingly sustained.

ANGELINE JAMES (NO. 20) AND NORA JAMES (NO. 21).

On April 26, 1906, Otwin (Anthony) James applied to have his minor children, Angeline, Nora, and Joseph Vivian James, enrolled with the Osages. The agent who investigated the case said that all the members of the council, including the old chief and the assistant chief, knew the applicants, and "were all of one accord in pronouncing them Kaws;" that the father of Otwin James was a mixed-blood Osage and Kaw; and that as none of the applicants had ever affiliated with the Osages he, the agent, looked "upon the case as one simply of speculation," and agreed with the council in refusing to admit them to membership.

The evidence clearly established the Osage and Kaw blood of the applicants, and established also that the father of Otwin married Margaret Curley, a Pottawatomie Indian, who continued to live among and affiliate with the Kaws, with whom he was enrolled, and that his children, including Otwin, were enrolled with their mother as members of the Pottawatomie tribe and were also carried on the Kaw rolls.

By a provision in the treaty of 1861 (12 Stat. L., 1192), with the Pottawatomies, as modified by the treaties of March 29, 1866 (14 Stat. L., 763), and February 23, 1867 (15 Stat. L., 533), certain members of the tribe became citizens of the United States and received their proportionate shares of the tribal benefits, both lands and moneys. Mrs. Curley and her children, including Otwin, received sometime prior to 1876 allotments of land and proportionate shares of annuities as Pottawatomies, and thereby became citizens of the United States. Her children were thereupon dropped from the Kaw rolls.

In 1899 Otwin and his brother applied for reinstatement with the Kaws; and in a decision of December 15, 1899, the Secretary of the Interior rejected their applications. He said:

"It appears, therefore, that the Pottawatomie citizens received their distributive shares of all the tribal property, including the value of their lands, and that they received in addition allotments with the Kaws, thus obtaining from the United States valuable lands gratuitously, which were not a part of the tribal estate, or at least a part of the estate that had been acquired by purchase or by the cession of some right or thing for a consideration.

"Those of the present applicants who received distributive shares of the tribal property seem to come within the departmental rule or regulation which requires Indians having equal rights in more than one tribe to elect the one to and with which he or she would belong and draw annuities, * * * and also the unwritten rule of the Department which prohibits double allotments to Indians. If admitted to the Kaw rolls, they would also be entitled to allotment with that tribe, when their lands shall be distributed, as well as to annuities. Having already received gratuitous allotments, as from the public domain, they are prohibited by the rule alluded to from further allotments. And having drawn annuities with the Pattawatomies and finally shared in the capitalized value thereof, they are also prohibited under the regulations from drawing annuities with another tribe."

The records show also that in 1891 Otwin James married Rachel Pappan, a Kaw, by whom he had nine children, six of which were allotted lands on the Kaw Reservation. His remaining children were born after Kaw allotments were closed.

It was admitted by the applicant and established by the evidence that he had never resided or affiliated with the Osages; and that that tribe had never recognized him nor any of his children as members. His application for the enrollment of his minor children named was submitted to the Secretary of the Interior who, on April 15, 1907, refused to grant the enrollment sought for the reasons:

"As the parents of Otwin James elected for him, under the terms of article 4 of the treaty of February 23, 1867, heretofore mentioned, to take his Indian rights with the Pottawatomies, which made him a citizen of the United States under a special provision of law, therefore he, at the time of his marriage to a Kaw woman, was a citizen Pottawatomie and not a member of the Osage tribe. His children would therefore have only such rights as Indians as they might inherit through their mother. I am accordingly of opinion, considering the facts in the case, that they are not entitled to rights in the Osage tribe."

A motion asking that the case be reopened was made August 6, 1907, by Judge Joseph F. Cooper, an attorney at law. As no new facts were adduced the Department on September 28, 1907, denied his request. Subsequently certain additional evidence was filed in the case by Dr. H. M. Hamblin, but was not given consideration, as the application had been passed upon finally by the Department in accordance with the provisions of the act of June 28, 1906. This evidence is cumulative to that acted on by the Department, and in no way would affect the former adverse decision in the matter.

ROSA MARR (NO. 25).

On September 5, 1905, Mrs. J. G. Marr, of Red Rock, Cal., applied for enrollment with the tribe, alleging that her mother, Pelijha Shoto, who died in Lassen County, Cal., was an Osage Indian. The case was referred to the Osage agent, who reported that he had investigated the application, but was unable to obtain any information from the older members of the tribe to substantiate her indefinite claim. The applicant was accordingly so advised, and appears to have made no further effort to establish her alleged Osage descent.

On June 28, 1906, Mrs. Rosa Marr, of Red Rock, Cal., and therefore thought to be identical with Mrs. J. G. Marr, who applied in 1905 for admission to the tribe, asked on behalf of herself and an unnamed child for a distributive share in the lands belonging to the members of the Five Civilized Tribes, but failed to say of which tribe she claimed to be a descendant. In response she was advised that if she would furnish the Department full information her application would be given consideration. Nothing further seems to have been heard from her.

As shown, there is no evidence whatever of Rosa Marr's being entitled to share in any way in the Osage tribal estate. It consequently would be a gross injustice to the tribe should she be enrolled and allowed to participate in Osage lands and funds.

OLA MARTIN (NO. 26).

Mrs. Pearl Armstrong (née Garrett) applied in December, 1906, for the enrollment of her minor child, Ola Martin. The case was fully investigated by the Indian agent, who reported against the enrollment of the child.

The facts show that the woman Pearl Armstrong was of loose character, associating alike with Indians and white men; that the alleged father of the child was James Martin, a full-blood Osage, who at the time of its birth was not living with Pearl Garrett and had a legal wife, and that the tribal council refused to admit the child to membership on the ground of illegitimacy.

The Department on April 15, 1907, held that the mother had failed to establish, by satisfactory proof, that the child was of Osage blood, and that the father was a member of the tribe, and denied the application.

MOSES PLOMONDON (NO. 29).

In August, 1906, this man applied for enrollment with the tribe. The case was investigated and submitted by the agent to the Osage council, which refused to sanction his admission to membership.

The evidence shows that the applicant is a white man who was illegally enrolled with the Osage tribe in 1873 and properly stricken therefrom in 1881 by the Indian agent; that no record or evidence of his alleged adoption was ever submitted by him or the Indian agent to the Department; and that although he had ample notice to procure further evidence in his case he failed to submit any. It is shown also that the tribal council refused to sanction his enrollment.

The Department on April 15, 1907, denied his application for the reason that he failed to prove that he had been properly adopted, and in view of the refusal of the national council to recognize him as being in any way entitled to share with their tribe.

By the provisions of the act of June 28, 1906, heretofore mentioned, Congress in its wisdom provided in effect for the administration or settlement of the Osage tribal or communal estate, and specifically directed therein what should constitute the membership of the tribe. This law provided for the enrollment of all persons properly entitled thereto and for the enrollment of the children of members of the tribe born between January 1, 1906, and July 1, 1907. It provided, also, that the Secretary of the Interior should cause a careful revision of the roll to be made to the end that any persons not lawfully entitled to be thereon should be stricken from the rolls, and directed that the applications of all persons for admission to membership, pending at the time of its passage, should receive proper investigation by the Department, and that the determination of the Secretary of the Interior in the cases passed on should be final.

Under the authority of the law mentioned all pending applications for enrollment and all cases of persons charged by the tribe with being unlawfully enrolled were most thoroughly investigated by direction of the Department, and I believe that the name of every person properly entitled to share in the tribal estate has been added to the Osage rolls. As is well known, the tribe purchased the lands of the present Osage Reservation, and, as shown, have emphatically refused to sanction the admission of any of the applicants named in the resolution.

I believe that it would be wrong to place any of the persons named on the rolls of the Osage tribe, and thereby permit them, as Indians, to share in lands and funds to which they are clearly not entitled. I therefore earnestly recommend that the joint resolution be not adopted.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, April 7, 1908.

Hon. CHARLES CURTIS,
United States Senate.

SIR: Agreeably to your request of the 4th instant, the following supplemental report on Senate resolution No. 70, pertaining to the enrollment of certain persons with the Osage tribe of Indians, is made for the information of the committee:

The cases referred to are those of Mrs. Josephine Thompson, who applied for the enrollment of her minor son, Floyd Thompson, and of her adult son, Charles Thompson, for his minor children, Grace and Thelma Thompson, and are numbered in the

previous report, dated March 31, 1908, as 35, 36, and 37, under the head of the "Stratton family."

The cases of these applicants were investigated with those of the James family, and the agent, reporting on the case January 31, 1907, said that the evidence clearly established the claim of Osage blood, it being shown that Mrs. Josephine Thompson was a sister of Otwin (Anthony) James, who was of mixed Osage and Kaw blood, and that the Osage national council rejected their applications January 28, 1907. He said also that none of the applicants had ever affiliated or shown a disposition to affiliate with the Osages, and that he agreed with the council in rejecting them.

The applications of these persons were given careful consideration by the Department, with the result that on April 15, 1907, they were denied, for the reason that the status of the minor children named followed that of their parents as members of the Kaw tribe, and not as Osages, with whom they had never affiliated or been associated, and that the council of the latter tribe had refused to sanction their admission to membership.

A motion asking that the case be reopened was made August 6, 1907, by Judge Joseph F. Cooper, an attorney at law. As no new facts were adduced the Department, on September 28, 1907, denied his request. Subsequently certain additional evidence was filed in the case by Dr. H. M. Hamblin, but was not given consideration, as the applications had been passed on finally by the Department in accordance with the provisions of the act of June 28, 1906. (34 Stat. L., 539.) This evidence is cumulative to that acted on by the Department, and in no way would affect the former adverse decision in the matter.

The evidence before the Department shows that Mrs. Josephine Thompson and her seven children and her son Charles and one of his children are enrolled as Kaws and were allotted lands as such, and that their minor children, for whom they now ask Osage rights, were born after the lands of the Kaws were all allotted. It shows also that these families have been reared and still reside among the Kaws and have never affiliated with the Osages or been recognized by the members of that tribe as members thereof. Such rights as they might have as Indians would therefore attach to them as members of the Kaw tribe and not as Osages.

I am of opinion that these persons are not properly entitled to share in the tribal estate of the Osages.

Very respectfully,

JESSE E. WILSON,
Assistant Secretary.

OKLAHOMA CITY, *April 17, 1908.*

Hon. ROBERT L. OWEN,
Washington, D. C.

MY DEAR SENATOR: I have been informed within the last few days that upon Thursday of next week a hearing on the enrollment bill will be had before the Senate Committee on Indian Affairs. I had hoped that I would be able to start for Washington on Saturday of this week, in order to have some time to confer with you on this matter before submitting your report to the full committee, but I am tied up in the United States court here in the trial of some important cases, and it may be I will be prevented from going to Washington at all.

The particular cases in which I am interested in the bill, as I have stated to you before, are those which are known as the Stratton and Revard people. The Stratton people are of the same stock of people as the Browns. You have been very well acquainted in the past with Osage Brown and his family. Stratton and his sister, Mrs. Marr, who are seeking to be enrolled, are brother and sister of Mrs. Brown, and this family are closely related to Augustus Captain, whom you probably remember as "Ogees" Captain.

The evidence in the case is very plain on that proposition, and we have submitted a list of the names of those persons who are on the roll whose rights are identical with those of the applicants for enrollment.

The Revards, which consist of Peter M. Revard and his sister, Mrs. Crump, and her children, belong to what is known as the Revard family, which is one of the largest families in the tribe, there being in the neighborhood of one hundred and fifty people on the Osage roll belonging to this family. The father of these applicants at the time of his death was a member of the Osage tribe, residing in the reservation, was enrolled with the tribe, and drew annuities the same as any other member. A sister of the applicants is now on the roll, and is being allotted lands with the Osage tribe of Indians. This same statement can be made with reference to the Stratton family, as a sister of Stratton and Mrs. Marr is now on the roll and receiving allotments, as is also her children.

The other applicants that I am interested in in this bill are Mrs. Appleby, Mr. Herard, and Mr. Plomondon, all of whom were formerly adopted by the Osage tribe of Indians, and who were without any authority from the Department stricken from the rolls by order of an Indian agent known as Cyrus Beatty.

These people have spent their lives with the Osages, and, in addition to that, Mr. Plomondon is a mixed-blood Indian of another tribe, and we feel that they ought to be entitled at this time to share in the division of the tribal property. Mrs. Appleby was, previous to the passage of the allotment bill, reenrolled by order of the Department, and the agent was directed to pay her annuity the same as any other member of the tribe, though it appears that the Department did not intend at that time she should participate in the allotments and funds of the tribe.

In the case of Pearl Callahan, who is seeking enrollment, the evidence is undisputed that she is a half-blood Osage Indian of illegitimate birth, and we think her enrollment was really directed by the allotment bill, but the Department, exercising the arbitrary power which is lodged in it, refused her enrollment. Her enrollment, and the enrollment of the Stratton and Revard families, were denied solely on the ground that they had not previously affiliated with the Osage tribe; and if you will refer to the statements heretofore filed with you, you will find that Congress heretofore has fully legislated so as to protect Indians who seek to adopt the habits and ways of civilization, and when they do so are to be protected in their tribal rights, the purpose of the law being to encourage them in giving up their tribal habits and ways and adopting the habits and ways of the white man without imposing any penalty for so doing.

If I should not be able to go on to Washington, Maj. L. J. Miles, who is associated with me in these matters, is in full possession of all the facts and circumstances in the case, and, having served as Indian agent for the Osages for a period of twelve years, has a great personal knowledge as to the rights of these applicants, and you can thoroughly rely upon representations he will make to you.

I write you this rather lengthy letter for the reason that I may not be able to talk with you before the matter is disposed of by the committee, and I do not want any delay in the matter, as this legislation must come out this session of Congress in order to protect these people in their rights, for before another session of Congress could act on the matter the lands and funds would probably be segregated and placed to the individual credit of the members of the tribe.

Trusting that the showing I have made is satisfactory to yourself and to the committee, and hoping I may be able to serve you in the future, I am,

Very truly, yours,

T. J. LEAHY.

DEPARTMENT OF THE INTERIOR,
Washington, April 21, 1908.

Hon. MOSES E. CLAPP,
United States Senate, Washington, D. C.

SIR: Permit me to acknowledge the receipt of your letter of the 8th instant, in which you refer to departmental letter of March 31, reporting on Senate joint resolution No. 70 for the enrollment of 37 persons with the Osage tribe, and ask certain specific questions in relation thereto.

In answer you are advised, seriatim, as follows:

"1. Which, if any, of the persons named in the resolution appear from the records filed with their applications for enrollment to have any near relatives claiming the same ancestor now on the Osage roll?"

Pearl Callahan (No. 6) is the illegitimate daughter of She-she, a full-blood Osage and a member of the tribe.

Mary J. R. Crump and her children, Pauline and Edward R. Crump (Nos. 8 to 10, inclusive) and her brother, Peter M. Revard (No. 30). Mrs. Crump and her brother have a sister, Mrs. Jane Raridon, enrolled with the tribe.

John Thompson Hunt, for himself and children (Nos. 14 to 19, inclusive). The applicant had a sister, Mrs. Mary J. Clem, who was enrolled with the tribe until her death. Her children are now enrolled.

The Stratton family, including Mrs. Rosa Marr (formerly Loveland), who is alleged to be a sister of G. J. Stratton, but is not so shown by the records of the Department (Nos. 22 to 25 and Nos. 31 to 34, inclusive). These adults, G. J. Stratton and Mrs. Rosa Loveland, have a sister, Mrs. Julia Ann Stevens (now Mrs. Hackleman), enrolled with the tribe.

Ola Martin (No. 26) is the illegitimate child of a white woman, Pearl Armstrong. It is alleged that her father was James Martin, a full-blood Osage, who is enrolled with the tribe, but the evidence is not conclusive.

"2. Has the Department exercised the right of enrolling persons as members of the Osage tribe without the action of the Osage council or in any case where the Osage council has denied such enrollment to the applicants?"

It has been the practice of the Department to submit all applications for enrollment to the Osage tribal council, and it is believed that no enrollments have been made by the Department without prior action of the council thereon.

There have been a few cases where the Department has, for reasons which clearly justified such action, directed the enrollment of an applicant over the protest of the tribal council.

"3. Please state if it appears from the records in the application of the persons named in the resolution whether any of them have ever affiliated with or been enrolled as members of any other tribe of Indians."

The mother of the Auld children (Nos. 2 to 5, inclusive) is enrolled with the Kaws, and the children are residing with her among that tribe.

Simon Clavier (No. 7) married a member of the Kaw tribe and affiliated with it.

The children of Mitchell Fronkier (Nos. 11 and 12), who is enrolled and affiliating with the Kaws, reside with him among that tribe.

The father of Angelina and Nora James (Nos. 20 and 21) is enrolled with the Kaws and also with the Pottawatomies. His children reside with him and not among the Osages.

The Pappan children (Nos. 27 and 28) are residing with their father, who is enrolled and affiliating with the Kaws.

The Thompson children (Nos. 35 to 37, inclusive) are residing with their parents, who are enrolled and affiliating with the Kaws.

"4. Please state whether any considerable number of persons have been added to the Osage roll by application to the Department, and, if so, have such persons been accorded full Osage rights as if they had continuously resided on the Osage Reservation?"

All applications for enrollment are submitted to the Department, but as a condition precedent to their consideration they are referred for investigation to the Indian agent, and by him submitted to the Osage tribal council. When their enrollment is authorized the applicants are granted full tribal rights. The case of Mrs. Jane Appleby is an exception as she was enrolled by the Department over the protest of the national council for tribal annuities only during the remainder of her life.

"5. Please state whether the record in the application of any of the persons named in said resolution claiming enrollment by adoption shows whether they were adopted as members of the Osage Nation by the council of the said nation."

Jane Appleby (No. 1) was adopted by a council of the chiefs on March 5, 1847, and remained on the rolls until 1874, when her name was dropped by the agent for some reason unknown; but neither the action of the cou ncil nor that of the agent in the matter was submitted to the Department for approval or disapproval. In 1894 the matter of her admission to the tribe was again submitted to the national council, which unanimously voted against her being enrolled.

Simon Clavier (No. 7) and Virgil Herrard (No. 13) were adopted by a tribal council in 1874 and were enrolled by the agent, but their names were dropped in 1878 by Agent Beede at the request of the tribal council. Their cases were not reported to the Department.

Moses Plomondon (No. 29) was adopted by the council and enrolled in 1873 and stricken from the rolls in 1878 by Agent Beede, and the action taken was not reported to the Department. His name was taken from the rolls by the agent at the request of the national council.

"6. Please state what evidence was submitted showing that the persons referred to in inquiry numbered 5, or any of them, were enrolled as members of said nation at the request and by the action of the Osage national council."

Jane Appleby (No. 1). In the record of the testimony taken by the Osage allotting commission June 15, 1907, at the Osage Agency, this woman said in effect that—

"She was married to a half-breed Osage in 1847 and was adopted by a council of chiefs and headmen on March 15, 1847, and was taken off in 1874 by Agent Beede at the same time that several white people were dropped from the rolls, and that at the time of her adoption the 'chiefs got together themselves,' as they 'did not have councilmen like they do now.'"

Simon Clavier (No. 7). This man in an affidavit dated October 30, 1902, says in effect that he was called to the Osage Reservation to meet the general council of the nation in 1874 and was then and there adopted as a member of the tribe, by reason of his marriage to an Osage woman, and was told that he was entitled to all the rights and privileges of an Indian; that he was told also by Isaac T. Gibson, the agent, that he had been so adopted; that he was paid his annuities the same as other members

of the tribe until 1878 when his name was dropped from the tribal rolls by Cyrus Beede, and that at the time his name was so stricken from the rolls there was no action of the council in the matter.

Virgil Herrard (No. 13). In an unsworn statement made June 2, 1906, this man says in effect that he was formally adopted by a general council of the Osage tribe in 1874, and the tribe never took any action undoing his adoption; that at the time he was admitted to membership, as indicated, he was married to an Osage woman and was requested by the council to come to the reservation and become one of them; and that in compliance with their request he settled on the Osage Reservation and has ever since made it his home.

Moses Plomondon (No. 29). In a sworn statement dated June 18, 1906, this man avers in effect that he was married in 1868 by a Catholic priest to Clementine Denoya, who is of Osage blood; that he was then living in the State of Washington, but removed with her to the Osage Reservation in 1873; that shortly thereafter the tribe speaking through its national council adopted him as a member, of which a record is on file at the Osage Agency, and that he has continuously resided among the tribes ever since his adoption.

EVIDENCE IN THE CASES OF MRS. APPLEBY, SIMON CLAVIER, VIRGIL HERRARD, AND MOSES PLOMONDON.

Affidavit made July 16, 1900, by Isaac T. Gibson, who was agent at the Osage Agency from October 18, 1869, until February, 1876, to the effect that in 1876, when the Superintendent of Indian Affairs was visiting the agency the council speaking for the Osage Nation made a report to the Superintendent adopting all the white men that had married mixed-blood Osages; that the adoption was not made at the request of the white men, or by any corrupt means used, but was gratuitous on the part of the council; that among those adopted he remembers the names of Simon Cl vier, Virgil Herrard, and James Simpson, and that there were others adopted whose names he can not now recall.

Affidavit made November 24, 1906, by L. J. Miles, who says that he was in charge of the Osage Agency from July, 1878, until September, 1885, and again in charge from May, 1889, until July, 1893; that when he first became agent he found that a number of white persons who had been enrolled in the tribe had been dropped; that among those so stricken from the rolls were Simon Clavier, Virgil Herrard, and Moses Plomondon, and that in 1883 or 1884 the Indians through their council asked that most of these persons be enrolled and given rights as members of the tribe.

An affidavit dated June 21, 1906, by Mrs. Martha Dunham, who says that Moses Plomondon, who was of some Cree Indian blood, married her daughter; that he came to the Osage Reservation shortly after 1873, and was then adopted by the same council which adopted Simon Clavier and Virgil Herrard, and that these persons drew annuities with the tribe until their names were stricken from its rolls, but she does not know why they were dropped.

An affidavit dated June 21, 1906, from John Florer, who says in effect that he went to the Osage Reservation in 1872 and was there in 1874 when the council of the tribe passed on the adoption of Simon Clavier, Virgil Herrard, Moses Plomondon, and others; that the council was composed of chiefs and headmen of the nation and was a representative one; that he was personally acquainted with the persons named, and knows that they were regularly adopted and have allied themselves with the tribe ever since.

A report dated December 5, 1904, from Frank Frantz, Osage agent, who says that Simon Clavier and Virgil Herrard were recognized by the Osage tribe and enrolled with them; that they have a moral right to ask that they be reinstated in the rights and benefits from which they were deprived when their names were dropped from the rolls in 1878, and that the matter of their reinstatement was brought before the tribal council on November 28, 1904, which unanimously refused to admit them.

A certified copy of an excerpt from the record of a meeting held October 2, 1874, of the committee on Osage citizenship appointed by the national council showing the adoption of Simon Clavier, Virgil Herrard, and Moses Plomondon to tribal membership.

Letter dated August 15, 1905, from Cyrus Beede, United States Indian inspector, which reads as follows:

"In reply I have the honor to state that, according to my remembrance, somewhat dimmed by age (twenty-seven years, according to their statement), at the time of my advent to the agency in 1876 I found the rolls stuffed full, running over, dead men retained and white men added, and I commenced the work of reduction; and, if memory serves me correctly, somewhere about the year 1877 or 1878, probably the latter year, an inspector was sent to the agency and I was directed to make the payment in his

presence, which at that time amounted to some $32,000. The inspector above referred to assisted in revising the roll and also a delegation from the business committee represented the Osage council and nation, and, if memory serves me correctly, no changes were made in the roll without the approval of this business committee; and it seems to me now that the said inspector witnessed the payment, which, in my judgment, was the first approximately correct roll made out at the Osage Agency, and I am quite positive was the first executed on the present blank form; and I can not recommend the reinstatement of the applicants, who have apparently remained satisfied off the roll for twenty-seven years, and were, in my opinion, legitimately dropped therefrom."

"7. Please state if the names of any Indians of Osage blood have been dropped from the Osage roll by action of the Department because such person or persons did not affiliate with the tribe or reside on the Osage Reservation."

The records of the Department do not show any case where an enrolled member of the Osage tribe has been dropped and denied membership therein for the reasons given.

"8. Please state, if practicable, if the names of any persons have been placed upon the Osage roll who were not on the reservation at the time the names were so placed upon the roll, and who have not at any time lived on the reservation."

The Department, on October 23, 1890, granted authority for the enrollment with the tribe of Coaina Mongrain, a sister of charity, living away from the Osage Reservation, who refused to return thereto and to whose admission the council objected. It was shown that the applicant was of Osage blood and that her brother and sister were enrolled and affiliating with the tribe at the time.

There may have been a few cases wherein applicants of clearly proven Osage blood not residing on the reservation have been enrolled by departmental authority where the evidence showed that it was their intention to go on the reservation and make it their home.

It is added for the information of the committee that the Commissioner of Indian Affairs has caused as thorough a search to be made of the records in his office as the time available would admit of, and believes that the foregoing answers cover fully the points involved.

Very respectfully,

JESSE E. WILSON,
Assistant Secretary.

Statement in support of the claim of John Thomas Hunt and his five minor children to be enrolled as members of the Osage tribe of Indians.

The papers on file in the Indian Office in his application for enrollment show that John Thomas Hunt for himself and five minor children applied for enrollment as a member of the Osage tribe of Indians. He established the fact that he was a half brother of Mary J. Clem, both being children of Mrs. Elizabeth Hunt, who was the daughter of Susan Larine, who was mentioned by name in the Osage treaty of 1825, and given an allotment under said treaty as a member of the Osage tribe.

Said Hunt made application for the enrollment of himself and his minor children, basing his claim upon the fact that he was a half brother of Mary J. Clem, they being both descended through the same mother from the said Susan Larine.

In the letter from the Commissioner of Indian Affairs to the Secretary of the Interior, dated July 19, 1901, in quoting from the report of the Indian agent in charge of the Osage Agency, on the claim of Mr. Hunt, it is stated:

"That he (the agent) feels confident that Mrs. Elizabeth Hunt, who died about 1861, was his mother as well as the mother of Mary Clem; that John Thomas Hunt was born in Missouri about 1856, and after his mother's death lived with his half-sister, Mary Clem." Mr. Hunt has lived on the Osage Reservation for many years.

His claim to enrollment was denied by the Secretary upon the ground that although Mary J. Clem had been enrolled by act of the Osage council, that subsequent to such enrollment by the council it had been claimed that the said Mary J. Clem was without Osage blood. For that reason alone enrollment was denied to the said Hunt and his minor children.

A commission, consisting of Houston and Scott, was appointed by the Secretary of the Interior to investigate and report upon the contested cases upon the Osage annuity roll, and their report was submitted to the Secretary, who submitted it to Judge Van Devanter, Assistant Attorney-General for the Interior Department, who reviewed, with others, the case of Mrs. Mary J. Clem. The Attorney-General in the Clem case says:

"It is quite clear that the Osage Nation failed to prove the charge that these parties have no Osage blood. * * * Considering the whole case, I can not come to any

other conclusion than that the Osage Nation has failed to sustain their charge that Mrs. Clem is not an Osage by blood." (See Opinion of Assistant Attorney-General of April 6, 1898, on Osage contested cases.)

In reviewing the Clem case, the Assistant Attorney-General makes the following statement:

"Jane Appleby swore that she had known Susas Larine, and that she never claimed to be Osage; that she never heard of her claiming it; that is was generally known that the 'Perrier crowd and the Clems amongst them' were not Osages. This was all the testimony before the commissioners on the part of the Osage Nation to sustain the charge that the Clem family was not of Osage blood, with the exception of the testimony of Peter J. Kisling. The testimony of Kisling was taken by the commissioners in executive or secret session, Kisling stating that 'sometimes when there is an uproar' he got embarrassed and forgot. Subsequently the counsel for Mrs. Clem and family asked the commissioners for a copy of Kisling's testimony. The commissioners declined to produce the testimony without the consent of Kisling, which he refused. The counsel for Mrs. Clem and family were consequently denied the right of cross-examination. It is not necessary to comment upon this extraordinary action on the part of the commissioners. Testimony taken under such circumstances surely is not entitled to credence, and with this remark I dismiss it from further consideration." (Opinion of Assistant Attorney-General April 6, 1898, Osage contested cases, p. 13.)

In the Clem case it was decided that the burden rested upon the Osage council to establish the want of Osage blood, but in the case of her brother, Mr. Hunt, and his minor children, the Department held that the burden was upon him to establish his Osage blood, and that is the reason for the different opinions in the two cases involving members of the same family. Subsequent, however, to the decision in the Hunt case five additional witnesses have testified in the case of Mary J. Clem, all of whom testified that Susan Larine, the acknowledged ancestor of both Mrs. Clem and Mr. Hunt, was in fact an Osage Indian by blood and was known and recognized as such by the people who knew her, and after a second investigation of the case of Mrs. Clem, the Department has again and finally decided that she was an Osage Indian by blood, and Mrs. Clem being now deceased, they have placed the names of her descendants upon the Osage roll as finally made up. This additional testimony is amply sufficient to establish the claim of Mr. Hunt to enrollment as an Osage Indian by blood.

The testimony of the five witnesses referred to was taken before the present Osage allotting commission in April, 1907, and can be found in their report of the Clem case now on file in the Indian Office.

Mr. Hunt made regular application for enrollment for himself and five children, and on July 23, 1901, the Secretary of the Interior denied him enrollment. His attorney on February 20, 1903, filed a motion for a review of the Secretary's decision, and on April 23, 1903, the Commissioner of Indian Affairs notified the attorney of Mr. Hunt that the Secretary had instructed him to notify the attorney to submit new and additional evidence in the case, together with the names of the witnesses and statement of their testimony. On February 20, 1903, the attorney wrote the Indian Commissioner that he desired to take testimony before the Osage agent if acceptable to the Commissioner, and if not, he requested the Commissioner to suggest a plan for taking the testimony, and there the matter stands.

Facts in cases of Virgile Herard and Simon Clavier, adopted members of the Osage tribe of Indians.

VIRGILE HERARD.—Virgile Herard, white man, married Euphrasis Lasarge, Osage Indian woman, recognized member of Osage tribe, October 10, 1864, at Wyandotte, Kans.

SIMON CLAVIER.—Simon Clavier, white man, married Mrs. Matilda Soldani, widow, member of Osage tribe of Indians, at Kansas City, in 1871.

The further facts as to these two parties are substantially the same as to each, and they will be stated here for both:

These two white men had lived with the tribe in Kansas long before the tribe became possessed of its large tribal funds. They had been instrumental in aiding the Indians by showing them how to follow the ways of civilization, building civilizing appliances for them, etc.

After removal of Osages from Kansas to the Indian Territory the council of the tribe required all white men married to members of the tribe to show that their wives were

members of the tribe and that the parties were married. Herard and Clavier, at same time 29 others, made proof required. Report was made thereon by the "Citizenship committee of the council" and a number were adopted and others rejected. Herard and Clavier were adopted at that time, October 10, 1874, and on authority of the council their names were enrolled by Agent Isaac T. Gibson, and they entered upon enjoyment of their rights as members of the tribe, and were recognized as such members until 1878, when Agent Beede, who had succeeded Gibson, removed their names from the roll because, being white men, he held that they had no right to share in the estate of the Osage Indians.

At that time Herard and Clavier were not able to produce the record of the council admitting them to membership in the tribe. They continued to reside with the Indians, and there they have lived ever since.

In 1902 the record of the Osage council showing the adoption of these men was found on the files of the Osage Agency, and with that record as proof of their membership in the tribe they made application for enrollment. Their applications were sent to the then agent, Hon. Frank Frantz, subsequently governor of Oklahoma Territory, who reported thereon, having before him affidavits of two members of the tribe who were present at the council when the applicants were adopted, to wit: Cyprian Tyrien and Joseph Revard, the former 62 and the latter 70 years of age in 1900, when they made their affidavits that of their own personal knowledge said Herard and Clavier were in 1874 adopted as members of the Osage tribe of Indians with equal rights with all other Osages. He also had before him the affidavit of Isaac T. Gibson, the United States Indian agent at the time, now living in Salem, Henry County, Iowa, to the same effect, and that he placed their names on the annuity roll by authority of the Osage council; that at a subsequent payment of annuity money the question arose as to whether payments should be made to said adopted white men, and the chiefs told the superintendent who was making the payment if he did not want to pay these their white brethren he might take his money back to Washington with him; that the adoption was not at request of the white men, but the gratuitous action of the council.

There are also affidavits by Martha Dunham, member of tribe, 75 years of age in 1906, and John N. Florer, both testifying to personal knowledge of the adoption of Herard and Clavier by the Osage council in 1874.

Ex-Agent L. J. Miles, who served as United States Indian agent, Osage Agency, from 1878 to 1885 and from 1889 to 1893, states that he examined the annuity pay rolls at the agency and found the names of Herard and Clavier had been enrolled and paid thereon, as claimed; that during his charge of the agency there was considerable dissatisfaction in regard to the way a large number of names had been dropped from the roll some time previous; that it was done in a summary manner and without cause; that thereby some families had been divided; that the council asked for the restoration of some of those names, and it was done. All of the witnesses testify to the regularity of the council proceedings whereby Herard and Clavier were adopted, and the testimony shows that there never was any question of fraud even hinted at in the matter of their adoption.

Before making his report to the Indian Office on the applications, Agent Frantz in 1904 submitted the matter to the persons then acting as council for the Osage tribe. In his report he states:

"The majority of the members of this council are familiar with the circumstances connected with these applications and know that the applicants were at one time enrolled with the Osages and participated with them in their rights and benefits. They also know that these men are white men and do not make claim to any Indian blood, consequently are emphatic in their denial of the applicants' requests to be enrolled with them and participate in their rights.

"As I have stated in connection with other cases, the present council, composed of seven full-blood and one mixed-blood Indian, will not look with favor on any application presented for enrollment, no matter how strong the proof of the right might be established. I can not see that any further proof is necessary to enable the Department to take final action in the premises, as the fact that these people were at one time enrolled with the Osages is self-evident. The records show it and the Indians do not deny it. These men, it is understood, joined their interests with the Osage Indians at a time when the tribe was not a rich one and they were invited to come and live with them. They did live here, and their presence was for good. Their work among these Indians was such as tended toward the upbuilding instead of the downpulling of the race. They were recognized by the tribe and enrolled with them, hence certainly have a moral right to ask that they be reinstated to the rights and benefits of which they were deprived by the action of an agent in charge of the Osage Indians, as is set forth in their applications.

* * * \

'The facts as they are are submitted to the Department, where the legal claims of these persons by reason of having been adopted can, without a question, be decided in accordance with the laws and precedents in similar cases, and I have to respectfully request that such action be taken as will insure to the applicants that to which they are justly entitled by reason of having once been adopted by these people, and not by reason of any right coming to them by birth." (December 3, 1904.)

September 7, 1905, the Secretary of the Interior, Hon. E. A. Hitchcock, refused to authorize the enrollment of the applicants because of refusal of the persons acting as Osage council in 1904 to favor the enrollment of them, and because of lapse of time since they were deprived of rights as members of the tribe.

The applicants showed that they had never theretofore been able to discover the record of the council proceedings whereby they were adopted in 1874. Agent Frantz furnished a certified copy of said council proceedings, found upon the files of his office, and whereon was the following:

"Simon Clavier, adopted." "Virgile Herard, adopted by marriage."

Other persons adopted by the same council proceedings, being white men married to Osage women, who were removed from the rolls, or permitted to remain thereon, are now recognized members of the tribe, as follows: The heirs of Frank Labardie; Mrs. Nancy Rogers, wife of John Rogers; Lewis Rogers; Susan Pappan, wife of John Pappan; John F. Palmer; John Toogiver; the Perry family, numbering quite a number, and others.

C. W. Belt,
Attorney of Record for Herard and Clavier.

Statement for the complete enrollment of Jane Appleby as a member of the Osage tribe of Indians.

The records on file in the Department in her application for enrollment and with the evidence taken in the investigations of the rolls of the Osage tribe of Indians made in 1907 support the fact that Jane Appleby, whose maiden name was Jane Moore, went to the Osage Nation, or rather was taken there by her father, when she was 4 years of age. That she was married to Augustus Captain, a member of the Osage tribe of Indians, about the year 1844; that she has lived with the Indians continuously from the time that she first went with them until the present time, now residing in Tulsa, Okla., just across the line from the Osage Reservation; that she was adopted by the chiefs of the Osage Nation and placed upon the rolls at the time that she was married; that she was given all the rights and privileges as a member of said tribe from the time that she was adopted until 1878, when she was dropped from the rolls without any investigation or without any reason assigned for the same; that she was placed upon the rolls again about the year 1905, and her name appeared on the rolls on January 1, 1906, when the law took effect allotting the lands and the moneys of the Osage tribe of Indians, but there was a provision, however, that her enrollment was not a complete enrollment, having been designated that it was for annuities only. The law authorizing the allotting of the lands and division of the moneys of the Osage tribe of Indians specifically states that they shall be divided equally among those whose names were on the roll on January 1, 1906, unless dropped therefrom by fraud. No fraud has ever been claimed or even hinted at in the enrollment of Jane Appleby, and she feels that having lived with the Osage people nearly all her life, having married a member of the Osage tribe of Indians, and having raised a large family that have been known and recognized as members of the tribe, and having been adopted by the tribe, and participating with them for more than forty years, she is entitled to be fully enrolled and to receive the benefits as other members of the tribe.

Respectfully submitted.

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Statement in support of the application of Pearl Callahan for enrollment as a member of the Osage tribe of Indians.

The records filed in the Department with the application of Amanda Callahan, now Amanda Gussman (she having since the filing of the application married a Mr. Gussman), support the fact that Pearl Callahan is the daughter of Amanda Gussman and a full-blood Osage Indian by the name of Sheshe. That it was a case of seduction; that after the birth of the child she went to Kansas City, Mo., and there worked for six years (to support herself and her aged mother and her child) in a shirt factory.

That she has borne a good reputation; that the Indian Sheshe fully acknowledged the child as his own, and has offered to take the child and keep it if she would give it up to him. That the application for enrollment was pending prior to the passage of the bill for the allotting of the Osage Indians in June, 1906; that her application was recommended by Indian agents William J. Pollock, and O. Micher and Millard, approved by the Indian Office, and her enrollment finally denied, almost wholly on the ground that she had not affiliated with the tribe.

The act providing for the allotment of the land and the moneys of the Osage tribe of Indians in the provision for making the final roll provides as follows:

"That all children not now on the roll but born to persons whose names were on the roll on January 1, 1906, shall be enrolled."

Sheshe, the father of this child, as he acknowledges himself to be, is a full-blood Indian and his name has been borne on the Osage roll from his birth. It is evident from the above relation that Pearl Callahan is clearly entitled to enrollment as asked.

Respectfully submitted.

L. J. MILES,
Representing Mrs. Gussman.

Statement in support o ,the application of Moses Plomondon for enrollment as a member of the Osage tribe of Indians.

The records on file with the Department with his application for enrollment will support the fact that Moses Plomondon was married to Clemmy Denoya, a member of the Osage tribe of Indians, some years prior to 1874; that he moved, with his wife, to the Osage Reservation; that he was regularly adopted as a member of the Osage tribe of Indians; that a copy of the proceedings of the council and the affidavit of the agent in charge of the Indians at that time, as well as the affidavits of other persons that participated in that council, will be found with the records of his application. It is also shown that Moses Plomondon is a member by blood of the Cree Indians of the Northwest; that he has never participated with his tribe, or received any benefits from the same; it is also shown in the evidence that such a practice was and is now common with the Osage people, as a large number of persons are now on the rolls of the tribe as adopted citizens. In fact, the case of Moses Plomondon is identical with those of Jane Applyby, Virgil Herrard, and Simon Clavier, except that he is a member by blood of the Cree Indians in the Northwest.

Respectfully submitted.

L. J. MILES,
Representing Moses Plomondon.

Memorandum of fact in the matter of the application of G. J. Stratton et al. for enrollment as members of the Osage tribe of Indians.

The parties interested in this application for enrollment and who have joined in the application are G. J. Stratton, for himself and his three minor children, Theresa, Therma, and Jerald Stratton, Rosa Marr (nee Loveland), a sister of G. J. Stratton, for herself and her children, Chlora Loveland and Mamie McCrary (nee Loveland) and her child, Hattie McCrary. G. J. Stratton and Rosa Marr are brother and sister to Mrs. Julia A. Hackleman (nee Stephens), who is a member of the Osage tribe of Indians and is on the tribal rolls as such. They are also brother and sister to Mrs. Jane Brown, nee Jane Stratton, now deceased, who was a member of the Osage tribe of Indians and during her lifetime her name was carried on the roll as such. Mrs. Brown left five children, who are now borne upon the Osage roll as members of the Osage tribe of Indians and to whom allotment of lands is now being made under the provision of the act of Congress approved June 8, 1906. G. J. Stratton and Mrs. Marr are children of an Indian woman by the name of Peliza Choteau, an Osage Indian woman, and Gabe Stratton, a white man. They are also uncle and aunt to Rebecca J. Darnell, who is a member of the Osage tribe of Indians and carried on the roll as such. Rebecca J. Darnell is the daughter of Julia A. Hackleman, a sister to these applicants. In 1896, the right of Rebecca J. Darnell, who was then Rebecca J. Valney, to be enrolled on the Osage rolls was investigated by the Secretary of the Interior and her rights sustained, and the evidence taken in that investigation was later used in the application for enrollment of her mother and brother, and on that evidence, her mother and brother were enrolled over the objection of and against the will of the Osage national council.

A copy of the same evidence with other evidence was used in the application on behalf of these applicants for enrollment and their enrollment denied by the Secre-

tary of the Interior, all of which is of record in the Department of the Interior. These parties made their application for enrollment prior to June 28, 1906, and on that date their application for enrollment was pending. The Secretary of the Interior previous to that time had passed upon their application and denied it on the grounds: First, that the Osage national council had rejected it. Second, on the grounds that they had not affiliated with the tribe. Third, the fact that they had sisters and other relatives on the roll who claim their right to enrollment through the same ancestors that these parties did was not conclusive of their right to enrollment.

An application for rehearing had been filed and rehearing granted, and on that application the case was pending on the date of the passage of the "Allotment bill," so that these applicants came strictly within the provisions of that statute. On the rehearing of the case the Secretary of the Interior again denied enrollment, but this time solely on the ground that they had not affiliated with the tribe. These parties claim their right to enrollment by reason of the fact that they are descendants of the Choteau family, and herewith is appended a list of names, together with their roll numbers, of persons who are now carried on the Osage rolls and who claim their right to enrollment through the common ancestors of these people. There are others whose names are carried on the Osage rolls who are related by blood to these people, but who can claim their right to enrollment through other sources in addition to the sources claimed by these applicants. The application of Julia Ann Stevens, now Hackleman, a sister of G. J. Stratton, and Rosa Marr, was in every particular identical with the application of these parties, and was submitted to the Department upon the same identical evidence, and had been rejected by the Osage national council for the same reason these applicants had been rejected, and on the same grounds the Department was asked to enroll them over the objection of the council. In passing upon that case the Secretary of the Interior used the following language:

"The case of Mrs. Julia Ann Stevens and her son, John H. Stevens, does not at all differ from the case of her daughter, Mrs. Rebecca J. Vadney, and it seems quite clear that Mrs. Stevens and her son are equally entitled, by reason of their Osage blood, to be placed upon the Osage annuity rolls. It is said by Assistant Attorney-General Hall, in his opinion in the matter of the application of Lewis Benjamin Lessert, 'Waiving the question of the right of the tribe through its council to pass upon the qualifications of applications for membership therein, it is clear that such applicants ought not to be allowed by the Department over their protest, except upon indubitable proof of the legal right to such membership.' In the present case, the application for enrollment is supported by strong and satisfactory proof of Osage blood, and there seems to be no good reason for refusing to enroll Mrs. Stevens and her son upon the annuity rolls. You are, therefore, directed to place their names upon the Osage annuity rolls."

Notwitstanding the decision of the Secretary of the Interior above referred to in the case of Julia Ann Stevens, a sister of G. J. Stratton and Rosa Marr, the Secretary of the Interior has held against these applicants and denied them enrollment. The evidence in this case shows that these applicants, at the time of their application for enrollment, and for a long time previous thereto, had resided in California and had not sustained tribal relations with the tribe. The evidence also shows that these parties were desirous of taking up their abode with the tribe as soon as they could receive enrollment, but did not desire to part with what little property they had in California, in the cost and expense of moving to the Osage Reservation, until they were enrolled and were permitted to share in the annuities and privileges of the Osage tribe of Indians, stating that if they were not enrolled they could not afford to use up what little property they had in the expense of moving. The fact that the Osage national council had rejected their application made them feel that there was uncertainty about their enrollment, and the further fact that the Department was inclined to support the council in their attitude, increased the uncertainty and warranted their action in that regard.

It might be well to remark here that this is the first case of the kind in which the Department has held that parties could lose their right to enrollment by reason of nonaffiliation with the tribe, and in the last twenty years many persons have been enrolled in the tribe by direction of the Secretary of the Interior who had not been previously affiliated with the tribe, and one person, to wit, Coenia Mongrain, was enrolled as a member of the tribe who never lived with the tribe previous to her enrollment and never has since and did not at the time of her enrollment, and is now sharing in the division of the tribal lands and funds of the Osage tribe of Indians. The act of Congress of February 8, 1887, provides as follows:

"And every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared

to be a citizen of the United States, and is entitled to all the rights privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

It was contemplated at the time of the passage of the act of Congress providing for the division of the lands and funds of the Osage tribe of Indians that persons in the condition of these applicants should receive enrollment. For that reason it was specially provided in that bill that the decision of the Secretary of the Interior should be final and that persons whose right to enrollment were denied them should not be permitted to resort to the courts to support their contention for enrollment. The refusal of the Secretary to enroll these applicants is in direct violation of the statute above quoted; and as the right to have their case determined in the courts has been by legislation taken away from them, thev now ask for legislative relief.

Respectfully submitted.

T. J. LEAHY.

List of names of persons now on Osage roll whose rights are identical with applicants.

532. Mary Chouteau.
423. Sophia Chouteau.
529. Louis Bighorse.
533. Andrew Bighorse.
736. Wah ko ki he kah, or Roza Chouteau.
677. Hunkah me, or Josephine Chouteau.
424. Hays Little Bear, now married to Lo hah me.
1068. Louis Chouteau.
1810. Oscar A. Ririe.
1805. Effie E. Ririe.
1806. Scott F. Ririe.
1807. Otis E. Ririe.
1808. Nellie I. Ririe.
1819. Arthur M. Ririe.
1838. Roza Fronkier.
1250. Laban A. Fronkier.
2066. Effie Chouteau.
1203. Augustine Carrelton, née Chouteau.
1053. Anthony Carrelton.
1707. Ella Carrelton.
1058. George Carrelton.
1856. Olla Roberts.
1204. Charles Donovan.
1205. Jessie Donovan.
1175. Emily Ross.
1825. Mary C. Ross.
1465. Coenia Killabee.
1400. Benedict Killabee.
1401. John A. Killabee.
1067. Stewart Chouteau.
1601. Sylvester Moncravie.
1839. Emmitt Rogers.
1840. Cecelia Rogers.
1841. Maud Rogers.
1054. Mary E. Carrelton.
1055. Eva M. Carrelton.
1056. Ethel Carrelton.
1057. Francis Carrelton.
1708. Grace Plomondon.
1709. Clementine Plomondon.
1800. Moses E. Plomondon.
1801. George Plomondon.
1059. Augustine Carrelton.
1060. Robert Carrelton.
1061. Mary E. Carrelton.
1062. George Carrelton.
1176. Clement De Noya.
1177. Mosby De Noya.
1178. Louis De Noya.
1179. Sadie De Noya.
1180. Elsie De Noya.
1181. Edna De Noya.
1182. Elizabeth De Noya.
1183. Milliard De Noya.
1826. Irene Rogers.
1827. Mary A. Rogers.
1828. Coena Rogers.
1829. Eldred T. Rogers.
1470. Was he ke Luse.
2067. Merle C. Wade.
866. Peter A. Captain.
1359. Roza A. Captain.
1968. Andrew Tayrien.
1560. Arenia Parien.
2068. Elmer Wiles.
2069. Lelina Wiles.
2070. Delila Wiles.
2071. Francis M. Wiles.
1941. Oscar E. Sweeny.
1621. George Newman.
2101. Estella Yeargain.
2102. Early T. Yeargain.
2103. Verona V. Yeargain.
2104. Leona Yeargain.
1361. Alfred Hoots.
1360. Agnes Jane Hoots.
1557. Minnie Beggs.
1977. Julia L Beggs.
1969. Jeanie Tayrien.
1970. Viola Tayrien.
1971. Alfred J. Tayrien.
1972. Violet M. Tayrien.
1973. William J. Tayrien.
1974. Rosana Tayrien.
1957. Edna Tayrien.
1025. Nelson Carr.
1026. Gussie M. Carr
1561. Delila Carr.
1567. Clarence Michaels.
1558. Roy S. McClaine.
2030. Andrew Trumbly.
1595. Rosa Trumbly.

List of names of persons now on Osage roll whose rights are identical with applicants—Continued.

960. Ida Trumbly.
1591. James W. Moore.
1592. Eliza Moore.
1593. Alice Moore.
2032. Oscar Trumbly.
1596. Augustine Moncravie.
1597. Virginia Moncravie.
961. Francis D. Dowhan.
962. Sewell C. Bowhan.
963. Erins S. Bowhan.
1316. Julia A. Stratton.
988. A. H. Brown.
979. Charles Brown.
1118. Roza Brown.
982. Edward Brown.
983. Ernest E. Brown.
1137. Rebecca J. Stephens.
1922. John Stephens.
989. William S. Brown.
990. Frank R. Brown.
980. Bernice Brown.
981. Treva Brown.
1120. John M. Cunningham.
1119. Robert B. Cunningham.
984. Mande Brown.
985. Laura J. Brown.
986. William P. Brown.
987. Lula B. Brown.
1877. Georgia Vadney, née Georgia Selby.
1138. Ann J. Vadney.
958. Cashleen Boren.
959. Evaleen Boren.
1923. Mildred V. Stephens.
1924. Gilbert Jackson Stephens.

Memorandum of fact in the matter of the application of Peter Revard et el. for enrollment as members of the Osage tribe of Indians.

The parties interested in this application for enrollment, are Peter M. Revard and his sister, Mary J. R. Crump and her daughter, Pauline J. R. Crump, and son, Edward Crump. (Pauline J. R. Crump is now married, and her present name will be furnished later.)

Peter M. Revard and Mary J. R. Crump are brother and sister to Mrs. Jane R. Raridon, who is a member of the Osege tribe of Indians and together with her children is borne on the Osage rolls as such. An allotment of land is now being made to her and her children under the act of Congress approved June 28, 1906, providing for the allotting of the land and funds of the Osage tribe of Indians. Prior to the passage of said act of Congress, these parties had made application for enrollment on the Osage rolls, and said application was pending at the time of the passage of said act. In support of their right to be enrolled they submitted a certified copy of the evidence taken in 1896 when the rights of their sister, Jane R. Raridon, to enrollment was investigated by the Department of the Interior. They also submitted affidavits of various persons showing that they were of Osage blood and that they were brother and sister to said Jane R. Raridon.

The evidence in their behalf shows that they are part Osage Indian blood and are the children of Lewis Revard, who was recognized as a member of the Osage tribe of Indians and carried on the Osage rolls as such, and who died in 1897.

The evidence also shows that they have many relatives whose names are now borne on the Osage rolls and who belong to what is known as the Revard family. Many of these parties are first and second cousins to these applicants. A list of names is submitted herewith, together with their roll number as shown by the Osage annuity roll of December, 1905, whose right to enrollment rests upon the fact that they are descendants from the same common ancestor with these applicants. There are others on the Osage annuity roll who are related by blood to these applicants, but the list herewith submitted contains only the names of those whose right to enrollment depends upon the fact that they are members of the Revard family. The evidence shows that these applicants prior to the time of their application for enrollment had resided in the State of California. Evidence further shows that Peter M. Revard, since making his application, has lived in the Osage Indian Reservation, but has not been permitted to participate in tribal rights or affairs, and that the other applicants are desirous of coming to the Osage Indian Reservation and taking up their home, but are only waiting for enrollment before doing so, stating that to move from California to Oklahoma would exhaust what little means they now have, and until after they are assured of enrollment they do not feel like breaking up their home in California and separating from what little property they have.

At the time these parties made their application for enrollment the same was submitted to the Osage tribal council, and that council rejected the application and assigned no reason for rejecting the same except that they did not want to add any more to the rolls. The case was afterwards taken up by the Department and the

Department decided against these applicants on the ground that, first, the council of the Osages had denied them enrollment; second, they had not been affiliated with the tribe; and, third, the fact that they had father and sister and other relatives on the rolls was not conclusive of their right to enrollment, and therefore the enrollment should be denied. A short time prior to the act of Congress approved June 28, 1906, motion for a rehearing was filed with permission to submit new evidence, which was accordingly done, and in the later decision the Department again held that they were not entitled to enrollment because of the fact that they had not affiliated with the tribe. In the later decision the question as to whether or not they were of Osage blood was not disputed.

These applicants have done all in their power to conform to the requirements of the act of Congress approved June 28, 1906, and commonly known as the "allotment bill," and are not in any way at fault for not now being enrolled, and as the said act of Congress denied to them the right to have their cause heard in the courts they are now helpless, and must depend upon legislative assistance.

The act of Congress approved February 8, 1887 (24 Stat. L., 390), provides as follows:

"And every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

Under this section of the statutes these applicants were unquestionably entitled to enrollment, and no doubt, in the act of Congress of June 28, 1906, making the decisions of the Secretary of the Interior final in matters of this kind, it was contemplated that he should be guided by the above section and would enroll all persons who could show that they were of Osage blood and were not affiliated with any other tribe of Indians.

These parties now ask for a consideration of their right to enrollment, and in case the same is found to be sufficient, they ask for an act of Congress directing the Secretary of the Interior to enroll them.

Respectfully submitted.

T. J. LEAHY.

List of names of persons now on Osage roll whose rights are identical with those of applicants.

863. Emily Allen.
864. Charlotte Whalen.
865. Esther Whalen.
866. Dorothea Whalen.
880. Ida Barber.
881. Bridget A. Barber.
882. Hattie B. Roach.
883. Clara M. Barber.
884. Edgar E. Barber.
885. Lawrence L. Barber.
886. Paul G. Barber.
887. Lula Barber.
888. Mary M. Barker.
889. Coaina Simms.
890. Cora Simms.
907. William Bennett.
908. Isabella Bennett.
909. William E. Bennett.
910. Teresa Bennett.
934. Marie B. Bowhan.
1055. Veva Conness.
1056. Geneva M. Conness.
1057. William D. Conness.
1058. Jane Conway.
1087. Eliza Dennison.
1088. Frank E. Fugate.
1089. John A. Fugate.
1090. Nellie Dennison.
1091. Eva Dennison.
1092. Bert Dennison.
1128. Joseph Dial.
1129. Mary J. Dial.
1132. James A. Dickey.
1133. John F. Dickey.
1146. Stanislaus Ducoty
1147. Versa Ducoty.
1148. Manza Ducoty.
1149. Pettie Ducoty.
1150. Frank S. Ducoty.
1220. Emily Hardy.
1221. Louisa V. Hardy.
1222. Goldie Hardy.
1223. Geneva Hardy.
1224. William R. Hardy.
1025. Ora Hardy.
1026. Orel Hardy.
1348. May L. Leahy.
1354. William T. Leahy.
1438. Leonard McCarthy.
1443. Mary E. McGuire.
1444. Ethel McGuire.
1445. Leo McGuire.
1446. Bird A. McGuire.
1447. William T. McGuire.

List of names of persons now on Osage roll whose rights are identical with those of applicants—Continued.

1448. Charles A. McGuire.
1613. Jane R. Raridon.
1614. Louis Miller.
1615. Ida J. Miller.
1616. Wendall Raridon.
1629. William Revard.
1630. William E. Revard.
1631. Della Revard.
1632. Gladys Revard.
1633. Solomon Revard.
1634. Charles Revard.
1635. Alex Revard.
1637. Paul Revard.
1639. Elsie E. Revard.
1640. Francis Revard.
1641. Mack Revard.
1642. Emanuel Revard.
1643. Pearl I. Revard.
1644. Viola L. Revard.
1649. Joseph Revard.
1650. Ralph Revard.
1651. Susan W. Revard.
1652. Clementine Revard.
1653. William J. Revard.
1654. Ronald V. Revard.
1655. Barbara Revard.
1656. Franklin Revard.
1657. Mark B. Revard.
1658. Nicholas N. Revard.
1659. Pearl Revard.
1660. Myrtle Revard.
1661. Charles Revard.
1662. Clarence Revard.
1663. Edward Clifford Revard.
1664. Clare Revard.
1665. Carrie Revard.
1666. Cora Revard.
1667. Nota T. Revard.
1668. McGuire N. Revard.
1669. Leonard Revard.
1670. Lode Revard.
1671. Opal A. Revard.
1672. Hazel Revard.
1673. Minnie Revard.
1674. Joseph Revard, jr.
1675. Nettie Revard.
1676. Edgar Revard.
1677. Curtis Revard.
1678. Maybell Revard.
1679. Odell Revard
1680. Aaron T. Revard.
1746. Cora Saxon.
1758. Anna W. Shobe.
1772. Gertrude Soderstrom.
1778. Alta A. Dickey.
1856. George E. Tinker.
1857. Clarence Tinker.
1858. Mary C. Tinker.
1859. Sarah Ann Tinker.
1860. Nicholas Tinker.
1862. Villa Tinker.
1871. Mary L. Tinker.

The following is shown in the testimony in case of Mary J. Clem, taken April 23, 1907, before Osage allotting commission:

Page 362: "Frank N. Dufoe, 74 years of age, testified that he married one of the daughters of Susan Larine, about 1855, in Bates County, Mo.; that he knew Susan Larine in 1850 in said county, and stated that she then claimed to be an Osage and was regarded by the community as an Osage Indian and was not known as any other kind of an Indian. He also testifies that Susan Larine is the same Susan Larine that he knew and whose daughter he married, is the same Susan Larine mentioned in the treaty of 1825, between the United States and the Osage Indians; that he is acquainted with the allotment known as the 'Susan Larine allotment.' He also testifies that Susan Larine was defrauded out of her allotment."

(Of the affidavits submitted at the time the action of the council of the Osages authorizing the enrollment of Mary J. Clem and her family one was made by Peter Perrier, now deceased, who testified that he married one of the daughters of Susan Larine; that said Susan lived in Bates County, Mo., and that she was known and recognized as an Osage Indian.)

Page 377: "At the hearing in 1899 Rachel A. Bryant, 60 years of age, testifies that she was a resident of Bates County, Mo., in 1848; that she knew Susan Larine at that time; that she was then living in Bates County, Mo., and that she was recognized and known as an Osage Indian."

Page 380: "Joseph M. Bryant, husband of Rachel A. Bryant, also testified that he was a resident of Bates County, Mo., and knew the mother of Mary J. Clem, and knew that they were generally known and recognized as Osage Indians."

Page 382: "John H. Thomas also testified that he was 67 years of age, and was born in Bates County, Mo.; has lived there all his life (except a few years) and in the immediate neighborhood in which the Javines and Clems lived, and that the mother of Mrs. Clem from his earliest recollection lived in Bates County, Mo., and was known and recognized as an Osage Indian."

Page 386: "Aaron M. Thomas, a brother of John H. Thomas, testified that he had lived practically all of his life in Bates County, Mo., and still lived there, in the

same neighborhood; that he knew the mother of Mrs. Clem, lived within a very short distance of where she lived, and that he knew that she was commonly known and recognized as an Osage Indian."

These five witnesses are additional to those examined at the trial of this case in 1896 and are all of them disinterested parties.

[Kappler & Merillat, attorneys and counsellors at law.]

WASHINGTON, D. C., *April 22, 1908.*

Hon. ROBERT L. OWEN,
United States Senate, Washington, D. C.

DEAR SENATOR OWEN: In accordance with our promise of this morning, we inclose you herewith a copy of the resolution passed by the Osage council against the passage of Senate joint resolution No. 70, which Senator Gore introduced by request. Senator Gore told Mr. Kappler the other day that somebody handed the resolution to him for introduction, and that he did so, but that he has no interest whatever in the matter, as he does not know the merits of it.

The Osages are strongly opposed to any favorable action being taken on this resolution, for the reason that the persons named in the same to be enrolled by Congressional action had their day in court before the Osage council, the Commissioner of Indian Affairs, and the Secretary of the Interior, and the Osages maintain that under the act of June 28, 1906, the action of the Secretary of the Interior is final. They are opposed to any reopening of their rolls, and while I was sitting in council with them they expressly requested me to inform Congress that they wanted the act of June 28, 1906, strictly adhered to by the Government, and that they are now not in favor even of enrolling children lately born.

The Osages claim that all persons who were entitled to be enrolled have been enrolled, and as the law of June 28, 1906, was passed for the purpose of setting a day when the rolls should be finally closed, they want the Government to adhere to such law. In the joint resolution No. 70 they see an attempt being made to violate the law and the understanding the Government had with them, and they are therefore greatly opposed to it.

The Osage Nation will be greatly indebted to you if you will use your efforts to defeat the resolution.

Yours, very respectfully, CHARLES J. KAPPLER.

Resolution.

Whereas on the 16th day of March, 1908, Senator Gore, of Oklahoma, by request introduced a joint resolution, No. 70, which was for the enrollment of certain persons as members of the Osage tribe of Indians and for other purposes, giving the names of the persons asking to be so enrolled; and

Whereas we are well aware that none of the names in the bill mentioned are justly entitled to enrollment, and further, that babies born since July 1, 1907, to parents whose names are already on the roll with undisputed rights, have been denied enrollment; so why should Congress authorize the Secretary of the Interior to place on the Osage tribal roll people whose rights and applications have been denied and rejected by the Osage national council, the Secretary of the Interior, and the Commissioner of Indian Affairs at Washington; and

Whereas in the allotment act approved June 28, the following was agreed to by the Osage tribe unanimously, and we earnestly request that the same be strictly adhered to; "that the roll of the Osage tribe of Indians as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Oklahoma Territory, as it existed on the 1st day of January, 1906, and all children born before January 1, 1906 and July 1, 1907, to persons whose names are on said roll on January 1, 1906, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January 1, 1906, including the children of members of the tribe who have, or have had, white husbands is hereby declared to be the roll of said tribe and to constitute the legal membership thereof;" and

Whereas if this bill becomes a law it will rescind that portion of the allotment act giving the Secretary of the Interior the power to revise and make final approval of the Osage rolls and as this is contrary to the intent and wishes of the Osage people, we ask for the defeat of same in Congress; and

Whereas it is the wish of the Osage tribe of Indians that their allotments be completed as soon as possible and the lands turned over to the individual members for their own use: Now therefore

Be it resolved, by the Osage national council in special session assembled this 31st day of March, 1908, That the Congress of the United States be, and is hereby, requested to defeat Senate resolution No. 70 as introduced by Senator Gore on March 16, 1908: *And be it further resolved*, That it is the wish and sentiment of this body assembled that the provision of the allotment act as approved June 28, 1906, be carried out and strictly adhered to.

Be it further resolved, That a copy of this resolution be mailed to the chairman of the Senate Committee on Indian Affairs, to the Chairman of the House Committee on Indian Affairs, the Honorable Secretary of the Interior, and the Honorable Commissioner of Indian Affairs.

I, Ne kah wah she tun kah, hereby certify that the foregoing resolution was passed by a unanimous vote of the Osage business committee or council in session at Pawhuska, Okla., on March 31, 1908.

Signed at Pawhuska, Okla., this April 2, 1908.

NE KAH WAH SHE TUN KAH (his X mark),
Principal Chief Osage Nation.

Attest:
HARRY KOHPAY,
Secretary and Acting Interpreter.

In the matter of Mrs. Julia A. Stevens and John H. Stevens. Osage Indian annuity rolls.

DEPARTMENT OF THE INTERIOR,
Washington, June 25, 1898.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: March 24, 1898, you submitted for departmental consideration a communication dated the 22d of February, 1898, being a report from Lieut. Col. H. B. Freeman, U. S. Army, acting Indian agent of the Osage Agency, Okla., upon the application of Mrs. Julia Ann Stevens and her son, John H. Stevens, for enrollment in the Osage tribe of Indians.

It appears that in November, 1897, Mrs. Stevens and her son applied to the Osage national council for enrollment as members of the Osage tribe of Indians, but at that time the national council refused to take action in the matter. The application was then withdrawn from the national council, and on December 22, 1897, transmitted to your Office, and by you transmitted to Lieutenant-Colonel Freeman for action thereon by the Osage national council. The Osage national council on February 18, 1898, unanimously rejected the application, but without assigning any reason for such action. It was then returned to your Office by the acting Indian agent, with the recommendation that the action of the Osage national council be sustained.

It appears from the evidence, consisting of affidavits by the applicants and a certified copy of the evidence filed by Commissioners Houston and Scott, with their report upon the case of Rebecca Jane Vadney, nee Stevens, one of the Osage annuity rolls contestees investigated by them, that a full-blood Osage woman married as her second husband a Frenchman named Choteau, by whom she had "Pelisha" (Eliza), who married in 1842 one Gabriel M. Stratton, a white man; that from this union Julia Ann was born in 1845; that this daughter (Julia Ann) lived among the Osages with her mother and attended the Osage Mission School until she was about 12 years old, when (in 1857) her father and mother took her with them to California, where her mother died in 1867 and where her father still resides; that Julia Ann Stratton married in California one Albert Stevens, a white man, and bore him Rebecca Jane (Vadney) and John H. Stevens, the latter being one of the present applicants; and that in the latter part of 1897 Mrs. Julia Ann Stevens and her son, John H. Stevens, came to the Osage Reservation and applied for admission to tribal membership in the Osage Nation.

Rebecca Jane Vadney (the daughter of Julia Ann Stevens) was placed upon the Osage challenged list, and her Osage descent thoroughly investigated by Commissioners Houston and Scott. Upon this claim your office reported to the Department, under date of December 29, 1897 (in the Osage annuity roll investigation cases), as follows (p. 17½):

"Rebecca Jane Vadney and family (Nos. 441, 442, and 443) claim Osage blood through the 'Captain family.' The evidence sustains this claim and shows that this woman is the granddaughter of one 'Pelish' (Eliza) Choteau, who was a half sister to Augustus Captain—a half-breed Osage—their mother being the same woman and a full-blood Osage; that this half-breed Osage woman, in 1842, married one Gabriel

M. Stratton, a white man, and at some time thereafter went with him to California; that one of her daughters (Julia Stratton) married Albert Stevens (white), and was the mother of Rebecca Jane, who married one C. M. Vadney; that this one-eighth blood Osage woman, with her white husband and child, left California and came to the Osage Nation in 1889, and under date of December 23, 1889, applied to the Osage national council for recognition as Osages; that their application for admission to the tribe was acted on favorably by the said council, and the matter then submitted to this Department for approval; that the question of their enrollment as Osages was then submitted to Special Indian Agent Parker, who reported, after a thorough investigation, that he was satisfied from the closest information he could obtain that they were of Osage blood and entitled to rights and privileges as Osages; that this Department under date of October 23, 1890, approved the action of the Osage national council in their case, and authorized their enrollment, and that they are now living off the Osage reservation at Cleveland, Okla.

"Both Mr. Scott and Mr. Houston find in favor of these people, the latter Commissioner, however, inviting attention to their residing off the reservation in violation of the laws of the Osage Nation, and referring the matter to this Department for a decision. No brief in this case.

"Recommendation: That this woman and her two children be sustained in their rights as Osages.

This recommendation was approved by the Department by letter dated January 21, 1898.

The case of Mrs. Julia Ann Stevens and her son, John H. Stevens, does not at all differ from the case of her daughter, Mrs. Rebecca Jane Vadney, and it seems quite clear that Mrs. Stevens and her son are equally entitled, by reason of their Osage blood, to be placed upon the Osage annuity rolls. It is said by Assistant Attorney-General Hall, in his opinion in the matter of the application of Louis Benjamin Lessert (Op. Asst. Attys. Gen. 10, 487), "Waiving the question of the right of the tribe, through its council, to pass upon the qualifications of applicants for membership therein, it is clear that such application ought not to be allowed by the Department over their protests, except upon indubitable proof of a legal right to such membership."

In the present case, the application for enrollment is supported by strong and satisfactory proof of Osage blood, and there seems to be no good reason for refusing to enroll Mrs. Stevens and her son upon the annuity rolls. You are therefore directed to place their names upon the Osage annuity rolls.

The papers transmitted with your letter are herewith returned.

Very respectfully,

THOS. RYAN, *Acting Secretary.*

STATEMENT OF MAJ. L. J. MILES.

Major MILES. I will take these cases up as I find them in the resolution, in groups as they belong together. First——

Senator CURTIS. Just give your name and residence, Major.

Major MILES. L. J. Miles. I reside at Lawrence, Kans. I took charge of the Osage agency in July, 1878; left the agency in 1885; returned in charge of the agency in May, 1889, and left the agency again in 1893. The first family that I find on the list in the resolution is the family of G. J. Stratton and his children; his sister, Rosa Marr Loveland, and her children, which covers eight people.

Senator OWEN. Who are her children? Do you see them on this list?

Major MILES. Yes, sir. The children of G. J. Stratton are Teresa Stratton, Therma Stratton, and Gerald Stratton. Rosa Marr is the sister of G. J. Stratton and the mother of Chlora Loveland. Mamie McCreary is the daughter of Rosa Marr, and Hattie McCreary is the daughter of Mamie McCreary. This covers eight of the applicants. The history of this family, as the records will prove, filed in this case, is that G. J. Stratton is the son of Eliza Stratton, who was Eliza Chouteau, the daughter of Legar Chouteau, who was agent for the Osages in the early days, by a full-blood woman, so that the mother of G. J. Stratton was a half-blood Osage. They went to California

in the early days. The family of one of the daughters of Eliza Chouteau returned and was enrolled about thirty-five or forty years ago.

The CHAIRMAN. Do you intend to rest upon your statement——

Major MILES. I will state the facts as they are already on file in the Indian Office. The record itself covers all the facts. I shall not go outside of the record.

The CHAIRMAN. I simply am asking if we are to rely upon your knowledge, or whether there is any documentary evidence.

Major MILES. There is documentary evidence for everything I shall say in these cases.

The sister of G. J. Stratton returned to the reservation about 1897 and was enrolled—enrolled by the Department after the council had denied her enrollment, for the reason that she had proven beyond a question that she was of Osage blood and was entitled to enrollment, and that decision is on file. Her daughter had previously come to the Osage Reservation and was enrolled. All the family to which G. J. Stratton belongs are on the reservation and enrolled, and their descendants, excepting these parties. They belong to what is known as the Chouteau Captain family, one of the largest families on the reservation, covering probably 100 or 150 people of the same blood, and these are all on the rolls of the Osage tribe to-day, or their descendants, except these parties named.

The CHAIRMAN. The name of that sister who returned and was put on was——

Major MILES. Julia Ann Stephens. "Peter M. Revard, Mary J. R. Crump, Pauline, daughter of Mary J. R. Crump, Edward R. Crump," are the next four of the group. Peter Revard and Mary J. R. Crump are the son and daughter of Louis Revard. Louis Revard went to California in an early day. The first that returned of his family was a daughter, Mrs. Reardon, who, when she returned, was placed on the Osage rolls and is on the Osage rolls to-day. Mr. Revard, the father, returned about 1890, and was placed on the Osage rolls and died as a member of the tribe. Peter Revard, whose application is made, came to the reservation about 1897. He came earlier than that and made application, but came later in 1897. He did not get enrolled, but went to the Spanish-American war, and was gone in the war for a number of years, and was taken sick and was in the hospital, and after he returned he made an application again. I will say right here that the applications of G. J. Stratton and Mr. Revard were made in 1903 and 1904—finally made in 1903 and 1904. His sister came to the reservation many years ago, but was not enrolled, and she came back and has been on the reservation this winter. So that there are now several members of this family who are on the Osage rolls. They belong to the Revard family, which is an old family on the reservation, and probably number over 100 people of the same blood as these applicants. The record will show the names of these people on the rolls.

Senator PAYNTER. Is the Department resisting the effort of these people to get on the rolls, or is there some statute in the way, or limitation?

Major MILES. They tried to resist it. Pearl Callahan is the child of a full-blood Indian named Cheche and a white woman. The circumstances are very peculiar and I will not go into details about them, except to say that the father and mother both made practically the

same affidavit, although they were 200 miles apart when it was made. They established the same fact, that the child was the result of almost a criminal assault. She made her application for enrollment a number of years ago. It was reported favorably by every agent who has ever reported upon it. It was reported favorably by the Indian Office, the first decision of the Department was, basing their action possibly upon the action of the council, that if she would give up the child to the Indian he would enroll it, or if she would go back to the Indian and live with him they would enroll it, both of which she declined to do. Afterwards it was finally decided against her on the ground that she was not affiliating with the Osages.

Senator CURTIS. Does the father admit that the child is his child?

Major MILES. Surely.

Senator CURTIS. Did he offer to take the child and take care of it?

Major MILES. He did; that affidavit is on file with the record.

Senator CURTIS. And there is no dispute or question but what this illegitimate child is his child, a full-blood Indian, and a member of the Osage tribe?

Major MILES. It is not questioned that I ever heard of.

Senator PAYNTER. So the child is to be made to suffer from the conduct of the mother and father, or one of them?

Major MILES. Yes, sir. "Virgil Herrard, Simon Clavier, Jane Appleby, Moses Plomondon," are all white people. Jane Appleby—taking them as they come—was taken to the Osage Nation by her father when she was only 4 years old. In 1847 she was adopted by the chiefs of the tribe and given all the rights and privileges of an Osage. She lived with the Osages and has lived with them all her life since that time. She has raised an Osage family. In 1847 she was married to a mixed-blood Osage, one of this Captain Stratton's family. Her grandchildren are all on the reservation and enrolled. She was dropped from the rolls in about 1874 and was placed back on the rolls by the Interior Department some two years ago—two years and a half ago—provisionally. She is asking for full enrollment.

Senator CURTIS. How did they put her back? You say provisionally; what was that provision?

Major MILES. The provision was that she should be entitled to an annuity for life.

Senator CURTIS. But no land?

Major MILES. But no lands.

Senator PAYNTER. I would like to refer back to the matter of this illegitimate child. Is there anything in the statutes of the United States or is there any tribal law that prevents such persons from inheriting or taking part?

Major MILES. Nothing that I know of.

Senator PAYNTER. Is there a statute or law of the tribe that there must be an affiliation with the tribe?

Major MILES. No, sir. I will state right here that since I have been connected with the Osage people in 1878 the Department has a number of times used its authority to place people on the roll disregarding the act of the council, and a number of times when the people have not lived on the reservation. I could cite here a number of cases where people have declared that they did not live on the reservation and never intended to live on the reservation, and still they have been enrolled.

Senator PAYNTER. How old is this child now?

Major MILES. She is 12 years old. I have a picture of her that I left down at the house.

Senator PAYNTER. Excuse me if I interrupt you, but I got interested in this child.

Major MILES. Certainly. Virgil Herrard, Simon Clavier, and Moses Plomondon are white people, Excipp Plomondon claims to have Indian blood in some northwest tribe. They were adopted into the tribe in 1873 or in 1874. The agent in charge said they were adopted by a called council for that purpose. They say they were asked to come to the reservation; that they were asked to come to the council and present the facts that they married regularly, which they did, and were adopted, so the agent in charge swears; they were placed on the roll by the agent in charge at the time, and were dropped from the roll in 1878 and never made an application until recently for enrollment, having been in possession on the reservation of all their rights as members of the tribe up to the time the division commenced to be made. Mr. Calvier at the death of his Osage wife married a Kaw woman on the adjoining reservation and lived over there. The Osage council record of the adoption of these people is now on file at the agency, and a certified copy by the same filed with their applications in the Indian Office.

Senator PAYNTER. Is that the fact?

Major MILES. Yes, sir; the record of the council is not a very complete one, but a record of the council we found on file at the agency, and a transcript of that record is placed on file with the application. "John Thomas Hunt, William T. Hunt, Thomas J. Hunt, Rhody May Hunt, Mary Elizabeth Hunt." John Thomas Hunt is the brother of Mary Clem, who was placed on the roll in 1890 or about 1890, and the others are his children.

The CHAIRMAN. Did she remain on the roll?

Major MILES. She remained on the roll until her death, and her children and grandchildren are now on the roll. There are numerous relatives—first and second cousins—composing quite a large family. "George Arthur Auld, Addie May Auld, Archie William Auld, Harry Auld, Flora Auld" are children and minor heirs of Isabella Auld. Isabella Auld is the daughter of Beatrice Houston. Now, as to what the record shows in this case I am not absolutely positive, but I will give what I know to be the facts: Beatrice Houston was the daughter of John Houston and his wife, and his wife was known and recognized as an Osage all her life and died on the Osage Reservation. Eliza Dial, one of her other children, is now on the Osage Reservation and enrolled, with all of her children and grandchildren. Emma Anderson, a sister, died on the reservation, and her children are enrolled.

The CHAIRMAN. A sister of this Isabella Auld?

Major MILES. Isabella's mother, Beatrice Houston. The mother of Isabella Auld married Joseph Pappan. Joseph Pappan was born on the Kaw rolls. Isabella Auld was enrolled by her father on the Kaw rolls and her children would have probably been enrolled on the Kaw rolls but for the construction at that time of the law of 1897, which provided that hereafter children born to an Indian woman and a white man should not be enrolled. I will say, however, that later the Department enrolled a number of people, changing their former

construction of that law, and that the law authorizing the settlement of the Osage affairs modified it, and said all children so situated should be enrolled. So that these children have an Osage and a Kaw right. They did not receive their Kaw right and are asking to be enrolled as Osages. All their mother's people, consisting of probably 200, or 150 at least, are now on the Osage rolls, enjoying all the rights of Osages.

Senator PAYNTER. If they had been placed on the Kaw roll would that deprive them from going on the other, except for that fact?

Major MILES. Under the rules it would.

Senator CURTIS. They could not claim on account of both tribes.

Mr. FIELD. Mr. Chairman, it seems to me right at this point it would be material to show the relationship between the Kaws and the Osages.

The CHAIRMAN. I think he had better complete his analysis, and then take up the general question afterwards.

Major MILES. Ola Martin I know little about. She is claimed to be the child of one James Martin, who I know very well. He was a full-blood Osage and the child was born in wedlock, as per the records. I know nothing more than the records will show with reference to this child.

Senator CURTIS. Do you know why she was not enrolled—has she been living off the reservation?

Major MILES. She has not. She has been living and is now living on the reservation.

The CHAIRMAN. Does the record show——

Major MILES. Excuse me. I talked to her mother when I was home two weeks ago, and asked the mother this question: "Is Ola Martin an Osage child?" She said promptly that she was. The record shows that she was married to James Martin, and that three months after the marriage this child was born. The next five are Grace Thompson, Thelma Thompson, Floyd Thompson, Nora James, and Angelina James. Joseph James and his family were enrolled as Kaws. Joseph James's brother, Frank James, was enrolled as an Osage and was on the Osage roll until his death, and his children or child, is now on the Osage roll. These children, as I understand the case, were born after the Kaw allotment, having the right of both Osage and Kaw, and having not participated in the Kaw allotment are now asking to be enrolled as Osages.

Senator CURTIS. Right there, state how the Kaw and Osage reservations are located?

Major MILES. The Osage and Kaw reservations are located adjoining.

Senator CURTIS. Side by side?

Major MILES. Side by side; yes, sir; and the history of the tribe is that they are nearly all related—the mixed bloods are nearly all related at least, and the probabilities are if we could get the history only a short time back we would find that the Kaw is only a band of the Osage who went in another direction when they left St. Louis. The other children are similar or identical—Panzy Fronkier, Maudie Fronkier, Blon Pappan, and Justin Pappan are all similar with the Thompson and James children.

Senator CURTIS. Some of the Fronkiers are on the Osage roll, are they not?

Major MILES. Yes, sir; some of them are. The families have the right of both Osage and Kaw, and are recognized as having the right of both Osage and Kaw.

I believe that covers all of the 37.

Senator SUTHERLAND. Major Miles, perhaps you neglected to state it, but have all these cases been passed upon by the Secretary of the Interior?

Major MILES. They have.

Senator SUTHERLAND. Can you state to the committee his reasons for refusing them enrollment? I do not want to interfere with your statement.

Major MILES. In some of these cases he gives a lack of affiliation. Thus were the Callahan and the Stratton cases.

Senator SUTHERLAND. But his principal reason was that the tribes had refused to recognize them as members.

Major MILES. I will say that that record is here.

Senator OWEN. I made a report at length in both of those cases, which is on file, and I take it will be printed with the other matter. The first reason generally is a lack of affiliation. In nearly every case the blood is proven, but a lack of affiliation is used as a reason.

The CHAIRMAN. Just asking for information, is the status of the Kaw property such that these children should have Kaw ancestry on the one side and on the other could have availed themselves of the rights under the Kaw ancestry?

Major MILES. The Kaw ancestry property has been divided.

Senator SUTHERLAND. Have none of these people any legal remedy? Can they not go into the court?

Major MILES. No, sir. I would like Mr. Leahy to make an explanation in that regard, because he is more familiar with the situation than I am, being a trained lawyer. I would like him therefore to make that explanation in a few words. Right at this point let me state that I have taken the position from the first time I went there up until to-day that the right to enrollment was a judicial right; they should have been entitled to a judicial decision. The right to enrollment was in no sense legislative, and it was a right that should be judicially determined, and certainly from my knowledge of the Osage council, it could not be assumed a judicial body. For the benefit of the committee I will say that an intelligent member of that council within the last few weeks stated to me that he would not vote to enroll his own brother—that he would be a fool to do so—because it would divide his annuity and the annuity of his children.

I would like, if the committee please, to have Mr. Leahy make a statement at this time.

STATEMENT OF T. J. LEAHY, OF PAWHUSKA, OKLA.

The CHAIRMAN. You may state your name and occupation and your relation to this matter.

Mr. LEAHY. My name is T. J. Leahy; my residence is at Pawhuska, Okla.; I am an attorney by profession. I represent a part of the applicants at this hearing.

Mr. Chairman, I will try to be as brief as possible in this matter, but I want to state that I have been living among the Osages the greater part of my life, and for the past sixteen years I have been

living where I now live. When I was a boy I went to school with a great many of the mixed-blood Osages who are now on the reservation, and I have an uncle who, in 1867 or 1868, was married to a mixed blood, so that I have relatives who are on the roll through that marriage. I also desire to state that my wife is a mixed-blood Osage, and we have four children who are interested in this proposition from a tribal standpoint, to say the least.

Senator SUTHERLAND. They are on the rolls?

Mr. LEAHY. They are on the rolls; yes, sir.

The CHAIRMAN. I think perhaps you had better make plainer what you mean; that is, that their interests would be hostile to the allowing of this petition.

Mr. LEAHY. Yes, sir; their interests would be hostile, considered from a tribal standpoint. When the matter of allotting the Osages came up, I of course took considerable interest in the matter, and at that time I was asking the Department to enroll some of the people whose names are in this joint resolution, especially the Stratton and Revard cases. I made the request at that time that the Department be permitted to hear these applications that were pending in order that the rights of applicants could be determined. It was also suggested by Major Miles and myself that if the Department refused to enroll them that we should have the right to go into the court—at least we did at that time have the right to go into the court under the existing law, and that that right ought not to be taken away from us. Congress, however, saw fit to change that law with reference to the Osages, and in the allotment bill—what is commonly called the allotment bill, the act of Congress of June 28, 1906—it is especially provided that the decision of the Department in this matter should not be subject to review by the courts. So that the doors of the courts were closed against us.

I want to make this plain as I go along, that at this time we are not asking for the enrollment of any persons whose applications were not pending at the time of the passage of the allotment bill. In other words, we are not bringing in new cases; we are not bringing in new people and asking this committee to consider them and give them the right of enrollment. We are only asking for the enrollment of those that we believed at that time were legally entitled to enrollment, and which I take it Congress felt, if the evidence was sufficient to sustain their right to enrollment, the Department would enroll them. The allotment bill provides as follows:

And the Secretary of the Interior shall have authority to place on the Osage rolls the names of all persons found by him after investigation to be so entitled whose applications were pending on the date of approval of this act.

Those whose applications were pending are the people we are now representing. Farther along in the bill it provides that they should not have the right to go into court, which was granted by a former act of Congress, which provided generally that where parties were applicants for allotment and allotment was denied them by the Secretary of the Interior, they should have a right to maintain an action in the proper circuit court.

The CHAIRMAN. When was this law passed—in 1906?

Mr. LEAHY. This allotment bill was passed June 28, 1906. I have a copy of it in my hand.

The CHAIRMAN. Pardon the interruption, but were the Osages excepted by any law at the time of the enactment of the general law which allowed Indians claiming allotment the right to go into the courts?

Mr. LEAHY. They were not; no, sir. This bill excepted them in this language that I have read.

The CHAIRMAN. At that time had these Indians applications for allotment?

Major MILES. Yes, sir; prior to that time. And their applications were pending at that time.

The CHAIRMAN. And those applications involved particular tracts of land?

Mr. LEAHY. No, sir; they were applications to be enrolled.

The CHAIRMAN. Simply to be enrolled?

Mr. LEAHY. Yes, sir; the bill had not yet been passed which provided for the allotting of land, and consequently they could not go into court until after the allotment had been made.

The CHAIRMAN. I misunderstood you.

Senator SUTHERLAND. This allotment bill, as I understand you, takes from you the right to go to a court—a right which they had under previous legislation. Is that correct?

Mr. LEAHY. Yes, sir. It reads as follows: "And the provisions of the act of Congress of August 13, 1894 (28 Stat. L., 305), granting persons of Indian blood who have been denied allotment, the right to appeal to the court, are hereby repealed as far as the same relate to the Osage Indians." That is the clause that took away from them the right, in case they were denied the right to participate in the allotment of the land, to go into the court.

Senator SUTHERLAND. What was the reason for denying that, do you know?

Mr. LEAHY. It was to hasten the time when the roll would be finally closed, and in order that this might not be dragged along through the courts.

Senator SUTHERLAND. It was to close the matter up?

Mr. LEAHY. Yes, sir. We pressed these matters——

The CHAIRMAN. Just pardon another interruption here. State, if it is within your knowledge, whether, at that time, there was sufficient land belonging to the Osages to cover all the allotments that were made including these?

Mr. LEAHY. At that time there were no allotments made, Mr. Chairman.

The CHAIRMAN. I mean that have been made.

Mr. LEAHY. There was sufficient land to cover all that were on the roll, and these also; yes, sir.

Senator CURTIS. There is sufficient land now, is there not, if these should be enrolled?

Mr. LEAHY. There are something like 660 acres per capita that will be divided among those now on the roll if the roll should not be increased.

Senator SUTHERLAND. What do you mean by 660 acres per capita?

Mr. LEAHY. I mean for each member of the Osage tribe there is sufficient Osage land to give each 660 acres.

Senator SUTHERLAND. Surplus land unallotted?

Mr. LEAHY. All of their land. They were all unallotted at the time of the passage of this bill. Since that time they have been allotting the land and have gotten through with three 160-acre tracts for each member. Each member now on the roll has been given three 160-acre tracts, and the remainder is still unallotted.

Senator SUTHERLAND. If this bill should pass, are there any unallotted lands there from which these allotments can be made?

Mr. LEAHY. Yes, sir. This resolution, as it is drawn, contemplates that the Secretary shall determine the value of an average allotment and pay to these Indians the difference out of the tribal fund between an allotment they may now receive and an average allotment, because of the fact that the land that has now been taken includes all the valuable land of the tribe and the land that is left is of little or no value.

Mr. J. J. HEMPHILL. Are there sufficient funds to pay it?

Mr. LEAHY. Oh, yes, sir; the funds of the tribe have not been segregated at all.

Senator SUTHERLAND. Let me ask you one other question before you proceed. Were all of the applicants for allotment enrolled except these 37?

Mr. LEAHY. Yes, sir; they were all on the roll at that time excepting those that we are now asking to be enrolled.

Senator SUTHERLAND. Thirty-seven people, then, are the only applicants for enrollment that were denied?

Mr. LEAHY. Yes, sir. I desire to call the attention of the committee to one other matter. We are not seeking to open the roll for new admissions. We are only seeking to put those on the roll who, under that allotment bill, we believe were entitled to enrollment. We are not seeking to throw the door open so that other people may come in.

Senator CURTIS. I do not think you understood Senator Sutherland's question. He meant are there others who might apply, did you not?

Senator SUTHERLAND. No.

Senator CURTIS. Then I misunderstood you.

Senator SUTHERLAND. My question was this——

Mr. LEAHY. That bill only covers these 37, because they were the only ones having applications pending.

Senator SUTHERLAND. My question was whether or not there were any of the applicants for enrollment who were denied enrollment besides those 37?

Mr. LEAHY. There were others, but their applications were not pending. They had permitted the Department to close the matter up, so that their applications were not pending at that time.

Mr. MERILLAT. Are there not quite a large number of others who have Osage blood and have been off because of nonaffiliation, and except for the technical matter that their applications were not pending, they are exactly in the same situation as those who are asking rights?

Mr. LEAHY. No, sir.

The CHAIRMAN. Just answer this broad question whether there are others than those who had been rejected and have never been allotted?

Mr. LEAHY. Yes, sir; they have been rejecting people for a good while where they were not satisfied that they were of Osage blood.

The persons who have heretofore been rejected have not been rejected because of nonaffiliation, but because the Department found they did not have Osage blood.

Senator BANKHEAD. What excuse did the Department give for refusing these?

Mr. LEAHY. The Department's reason for refusing to enroll these people was that the council of the tribe did not consent to it, and, secondly, that they had not affiliated with the tribe—that they are nonaffiliated Indians.

Senator BANKHEAD. And not because of blood?

Mr. LEAHY. No, sir; there is no question about the blood. I think possibly the Department does question the blood as to some of those applicants; I am not sure as to that, but as to the ones that I am directly interested in there is no question about the blood. The report, which I think you will find the Department will make upon these matters, will show that the Stratton people and Revard people are all of Osage blood, and that their reason for denying them was, first, that the council denied it, and, secondly, that they were nonaffiliated.

Senator SUTHERLAND. Those 37 people made application to the council, did they?

Mr. LEAHY. Yes, sir.

Senator SUTHERLAND. I am asking as to the reason that the council had for denying them.

Mr. LEAHY. Yes, sir; I was there and heard the council argue the proposition.

Senator SUTHERLAND. What was the reason of the council?

Mr. LEAHY. The reason they did it was, to use their own expression, that they did not want to make any more Osage Indians. That was the only reason they had. The reason back of it all was because they did not want to divide their property among any more members. They did not want to increase their roll so as to decrease the worth of an individual right. It is a fact that the members of that tribe openly and avowedly say that if their brother was off the roll they would not vote to put him on the roll. The right of an Osage is considerable. Senator Curtis stated, I think, that it was $25,000, but he is probably $10,000 too high—and to enroll a number of people you can see that it would probably take $100 or $200 from each member of the tribe.

Senator SUTHERLAND. How many members are there, approximately?

Mr. LEAHY. Two thousand two hundred and thirty.

Senator CURTIS. They would each get 600 acres in land and share in about $8,000,000 in money?

Mr. LEAHY. Yes, sir; each would get 660 acres.

Senator CURTIS. And an interest in the oil and gas lands—the most valuable oil and gas deposits in the United States. Nobody knows what it is worth.

Mr. LEAHY. Nobody knows what it is worth; it is something you can not value at this time. That is still tribal property, the oil and gas. Now, then, to take up the case we have here—the case of G. J. Stratton and his children, and his sister and her children and one grandchild. As stated by Major Miles, the mother of G. J. Stratton and of Mrs. Marr was a half-blood Osage Indian. The father and

mother of Mrs. Stratton and Mrs. Marr went to California at an early date. I am not able to state whether those children were born among the Osages or born soon after they went to California, but it was about that time. Some of the older children, however, were born among the Osages. There was one member of the family that a good many years ago came back to the tribe and lived with the tribe up to the time of her death. Her name was Brown, and her children are on the roll. Senator Curtis is well acquainted with some of them—Charley Brown and Ed Brown—and there may be some of the other Senators who have seen them here. They show plainly the mark of Indian blood. Mrs. Julia Ann Stevens in 1896 or 1897—who was another sister to Stratton and Mrs. Marr—with her son, made application for enrollment. I prepared the application for her and the council at that time denied her application. The Indian agent reported against it for the very same reason that these applications are now denied. It came on to the Department and the Commissioner of Indian Affairs, following up the same line of argument, that they had been nonaffiliated, also reported against them to the Secretary of the Interior.

The Secretary of the Interior took the matter up and reviewed it quite carefully, and in quite a long letter to the Commissioner of Indian Affairs directed the enrollment of these people, stating very clearly that the proof was so clear that notwithstanding the fact that the council had rejected them and notwithstanding the fact that they had lived away from the tribe, they should be enrolled. That letter of the Secretary of the Interior directing their enrollment is among the files and papers, as well as other evidence which was taken at a former investigation of the membership of the tribe in 1896, in which I took part. In that investigation Mrs. Rebecca J. Vadney, who is a daughter of Mrs. Stevens, and who came earlier to be enrolled, and was enrolled with the tribe, was investigated. Upon the evidence taken in her case, and the action of the commission that was appointed to investigate that roll, and the findings of the Department, and the other evidence submitted to show that Mrs. Stevens was what she claimed herself to be, the Secretary directed her enrollment. All of those records are in the Department. There is nothing new to be injected into the case outside of the records. The matter has been gone over a number of times, and has been briefed and rebriefed, and there is nothing new in the way of evidence; there is nothing new in the way of the law. In 1887 Congress passed an act in which it stated that persons who had removed, who had separated themselves from their tribe and had gone out and adopted the ways and habits of white men or white people, that they should become citizens of the United States; they were recognized as citizens of the United States. That inducement was held out to the members of the different tribes to get them to go away from their reservation; to get them to go out and mingle with other people and become citizens of the United States, and they specifically declared that by reason of doing so they should not lose their rights to the tribal property. That was the act of Congress of 1887.

Mr. MERILLAT. Was there not a proviso in that act specifically excepting from this provision the Five Civilized Tribes, the Peorias, the Miamis, and Osages?

Mr. LEAHY. No, sir. That provision was with reference to the allotting of the land and had no application whatever to this matter.

Mr. MERILLAT. May I be permitted to read that section. It is section 8, and is as follows:

SEC. 8. That the provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles and Osage, Miamis and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska, adjoining the Sioux Nation on the south, added by Executive order. (Kappler, vol. 1, p. 35.)

Mr. LEAHY. Yes, and Mr. Merillat, if you will read the entire act carefully you will see that it was intended by Congress that that should go directly to the proposition in the bill which related to the allotting of land generally. The Indian Territory, of which the Osage Nation was then a part, was exempted from the provision—that is, the Osages and Five Tribes, from the general power of the Department to provide for the allotting of lands.

Senator SUTHERLAND. I want to ask another question. The Secretary of the Interior refused enrollment to these people upon the principal ground that they had been denied enrollment by the council, did he not?

Mr. LEAHY. Yes, sir.

Senator SUTHERLAND. Do you know whether or not he enrolled any applicant who had been denied the right by the council?

Mr. LEAHY. Yes, sir. He enrolled Julia Ann Stevens and her son. Julia Ann Stevens is a sister of Mr. Stratton and a sister of Mrs. Marr.

Senator SUTHERLAND. Was it made to appear before him that they had been denied by the council?

Mr. LEAHY. Yes, sir.

Senator SUTHERLAND. Does any reason appear in the record for that statement?

Mr. LEAHY. I have a copy of the letter here. It is a press copy taken from the record of the Department.

Senator SUTHERLAND. What I want to know is whether the Secretary gave any reason for enrolling some and denying enrollment to others who had been denied by the council?

Mr. CROSTHWAITE. He does not explain it. He denies some and does not give any reason.

Mr. LEAHEY. After going over the matter of the evidence that was submitted and the proposition as to what the Department had theretofore found with reference to the daughter of Julia Ann Stevens and stating that there was no difference in their cases, the Secretary says this:

The case of Mrs. Julia Ann Stevens and her son, John H. Stevens, does not at all differ from the case of her daughter, Mrs. Rebecca Jane Vadney, and it seems quite clear that Mrs. Stevens and her son are equally entitled, by reason of their Osage blood, to be placed upon the Osage annuity rolls. It is said by Assistant Attorney-General Hall in his opinion in the matter of the application of Louis Benjamin Lessert (Op. Asst. Attorneys-General 10, 487), "Waiving the question of the right of the tribe, through its council, to pass upon the qualifications of applicants for membership therein, it is clear that such applications ought not to be allowed by the Department over their protests, except upon indubitable proof of a legal right to such membership.

In the present case the application for enrollment is supported by strong and satisfactory proof of Osage blood, and there seems to be no good reason for refusing to enroll Mrs. Stevens and her son upon the annuity rolls. You are, therefore, directed to place their names upon the Osage annuity rolls.

Senator SUTHERLAND. He seems to hold there that the action of the council would be prima facie.

Mr. LEAHY. Yes, sir; that action of the council ought not to be lightly passed over, but that where the proof was indisputable that the action of the council ought not to govern in the matter; that where the proof is clear, and where applicants for enrollment furnish satisfactory proof, that they ought to be enrolled, regardless of the act of the council, and it appears to me that it ought to appear clear to anyone that the council ought not to be trusted in these matters. They are each of them vitally interested outside of performing their duties as members of the council.

Senator SUTHERLAND. Let me ask one other question. You are by this bill asking the Indian Committee of Congress to review the action of the Secretary of the Interior and to set it aside, virtually. Why would it not be satisfactory if you had legislation authorizing these people to go to court with their cases?

Mr. LEAHY. The reason we have asked for this legislation in this way is that we feel that to authorize these people now to go into the courts and maintain an action for their rights would delay the work of the Department in settling up affairs with the Osage tribe of Indians. We think that we can satisfy the committee; we think that the records will satisfy the committee that these persons are of Osage Indian blood. We would have gone into the courts a good while ago had it not been for the fact that we were denied that right specifically by the act of Congress which provided for the allotment of the Osages. We, at this time, will say that we are willing to go into the courts, and have this matter tested in the courts, but we did not feel that this committee, nor did we feel that the Congress or the Department, would consent to the proposition of delaying the settlement of these matters down there long enough for us to determine our rights in the courts.

Senator SUTHERLAND. You can see that this committee has no such facilities for examining that question of fact as the courts would have.

Mr. LEAHY. Yes, sir; but I think the report of the Department will show that these people are Osages. I think that the Secretary of the Interior does not dispute that fact—that they are of Osage blood.

Senator GAMBLE. I know of some parties who are asking for certain names to be inserted in this resolution.

Senator SUTHERLAND. There probably will be others who claim to be similarly situated, who will object to that legislation.

Mr. LEAHY. No; there are no others who are similarly situated.

Mr. MERILLAT. There are 140 persons who claim to be Osages and are always insisting that they have Osage blood, and in some instances I believe the Department concedes that there may be some strain or quantum of Osage blood.

Mr. LEAHY. Now, I desire to say this, in response to that suggestion. I said that there were no others similarly situated. I can repeat that, because these are the persons whose applications were pending for enrollment at the time of the passage of the allotment bill. Their applications had not been finally passed upon; the question of their enrollment had not been finally determined. These other parties mentioned are persons who were not under the terms of the allotment bill entitled to enrollment, and we were entitled to enrollment under that law.

Senator CURTIS. What provision does the allotment bill make with reference to applications for enrollment?

Mr. HEMPHILL. That distinguishes this case from all the others.

Mr. LEAHY. It provides as follows, as I read a while ago:

And the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him after investigation to be so entitled, whose applications were pending on the date of the approval of this act.

And we are bringing ourselves exactly within that clause, and we are not asking for the enrollment of any other persons who may show Osage Indian blood who did not come under the provision of that bill.

Senator CURTIS. You claim that the one hundred and odd that the attorney for the Osages spoke of did not have, or had not had, their applications on file at that time.

Mr. LEAHY. Yes, sir; and in addition to that I will state that I previously presented for some fifty or sixty persons their application for enrollment, and they were denied; but they were not pending at the time of the passage of this bill and are not coming before this committee and asking consideration.

Mr. KAPPLER. But they will come before this committee if the bill is passed.

Mr. LEAHY. In view of the legislation that has been had, and the condition of this matter with respect to those who claim to be entitled to enrollment under the allotment bill, we are willing to be bound by that bill. We can go out and get applications from fifty or sixty persons who I am satisfied were of Osage Indian blood, and they were refused or denied particularly because they could not produce satisfactory proof, but I think we should be confined to these.

Now, I wanted to say as to G. J. Stratton and his sister, Rosa Loveland, or Rosa Marr now—they are quarter-blood Osage Indians. With reference to Rosa Marr I desire to make another statement that is within my knowledge, and that is, at the time she made her application her name was then Rosa Loveland. There does not seem to be anything specifically in the records to show that Rosa Marr was Rosa Loveland, but I was there and talked to her at the time she made her application, and have talked to her since she became Rosa Marr.

Senator CURTIS. And you know that she is the identical person?

Mr. LEAHY. Yes, sir.

Senator SUTHERLAND. She is a quarter blood, you say?

Mr. LEAHY. Yes, sir; a quarter-blood Osage. These people made their applications in the first instance to the Osage tribe for enrollment. I prepared the applications for them, and they were at that time in the Osage Reservation and desirous of taking up their abode with the Osages. They had but little property; they had been in California, and had come out there on account of having relatives in the Osage country and came there for the purpose of taking up their abode. I said to them that it would take some little time on account of the slow progress that matters of this kind ordinarily made in the Department, and that they had better not come then; that they could come and live with the Osages whenever their rights were determined. The fact that they had not been living on the Osage Reservation was due to advice from me and not from any desire on their part not to affiliate with the tribe, because prior to that time the question of affiliation had not been raised in the Department, and the Department had not denied enrollment to anyone on account of nonaffiliation. With reference to the Revard family, they are a good deal in the same position as the Stratton family, except

that Peter Revard, whose name is mentioned in this resolution, has been living on the Osage Reservation.

I want to state one other thing upon the question of affiliation. It was impossible for them to come there and affiliate with the tribe—just as much as it is impossible for a white man to come there and affiliate. I have lived there at one point for sixteen years, and have been there more or less since 1884. I could not affiliate and do not affiliate now; that is, in the way of affiliation, because these matters are given over absolutely to the Department for their determination and control, and people who live there, except where they were there in some official capacity, have been required to pay for staying there. I have known of people who came there and whose applications were pending for enrollment who were required to pay $1 a month tax for the privilege of living on the reservation. That was the general rule that was in vogue down there. Major Miles knows that those people, outside of the members of the tribe, have been paying for living there, and even those claiming to be Osages were not permitted to take part in the council or to vote, and were given absolutely no recognition whatever.

So the question of affiliation with the tribe was something that was impossible for anybody except those whose names were on the roll.

Now, with reference to the Callaghan child about whom Senator Paynter was asking some questions a while ago, I would state that that is the illegitimate child of the Indian Sheshe. It is my opinion, and it was the opinion of the counsel for the Indian child at the time her application was being presented—but who are now on the other side of the case, unfortunately—that she was really entitled to enrollment under the terms of this allotment bill, because the bill said "the children of persons whose names were on that roll on the 1st day of January, 1906, shall be enrolled." The Secretary of the Interior did not enroll her and at no time in his findings did he go so far as to state whether or not she was the child of Sheshe. If he had gone far enough in any of his findings to state that she was the child of Sheshe, it was the intention of counsel, and it would have been right, to have brought at once an action in mandamus to force him to place the name of that child on the roll. But he refused in his findings to do that. In his report to this committee he says that she is the child of Sheshe, but when he was considering the case and in his opinion in the case he refused to come to the point of saying whether or not she was the child of Sheshe, although there is not a scintilla of evidence in all the case, not even an intimation, that she is not the child of Sheshe. Sheshe testifies as to the circumstances under which she might have become his child. The mother of the child testified to the same circumstances, and the child itself shows plainly that it is an Indian; it bears all the marks of an Indian, and yet she was not enrolled under this bill. She should have been enrolled. If the Secretary had come to the specific point and had not dodged the issue, an action in mandamus would have properly laid against him and he would have been forced to enroll her.

In the Appleby matter, as was stated to you by Mr. Miles, Mrs. Appleby was enrolled in 1847. Her father had been among the Osage Indians. She was just a very small girl when she came among them, 3 or 4 years of age, when they lived over in Missouri. She was enrolled, as I have said, in 1847, because of her marriage to a member

of the tribe. Some time in the seventies her name was taken from the roll without any reason being given therefor. In 1905 the Secretary reenrolled her, providing that she should only have the right to draw annuities during her lifetime. The allotment bill does not make any discrimination between the rights that belong to the members of the tribe. It was our contention and has been our contention that under the allotment bill she should have been enrolled. Every person who drew or shared in the annuities of that tribe was at the time of the passage of this allotment bill a member of the tribe, as is shown by the roll of that tribe. They were members of the tribe regardless of whatever difference there may have been in their rights. She should have been enrolled, but she has not been enrolled. We are now asking that she be given the rights which we think she is entitled to under the terms of that bill.

With reference to the Hunt family I will say that John Thomas Hunt is a brother of a woman who was enrolled along about 1890, by the name of Mary Clem. The Clem case has become somewhat notorious in the Department, because it has been fought throughout two investigations. In 1896 the rights of the Clem family to become enrolled were investigated by a special commission appointed to investigate those rights, and, finally, the right of Mrs. Clem and her family to remain on the rolls was determined by the Secretary in her favor. The decisions had been against her up to that time, but in a final decision the Secretary sustained her on the roll. Under the allotment bill, which provided for the investigation of the rolls, her case was again brought up and the matter was again fought before the commission that had authority to investigate it, and it went through the Department and to the Secretary of the Interior, and the Secretary again sustained her on the roll. John Thomas Hunt is a brother of hers, and his children are of course nephews of hers. The Hunt family belongs to what is known with us as the Javine family, and the Javine family date their right to enrollment back to Anson Larine, whose name will be found mentioned in the treaty of 1825.

There is one other matter which Major Miles spoke of as to which I think he is a little mistaken. He said that Moses Plomondon was a white man.

Major MILES. No; I said excepting Moses Plomondon.

Mr. LEAHY. I thought you said Moses Plomondon was a white man. He is a part blood Indian of another tribe, but has never sustained relations with his tribe.

Senator SUTHERLAND. Yes; he stated that.

Mr. LEAHY. I desire to say, gentlemen of the committee, that if this matter can be closed up at this session of Congress it is highly important that it be done, because to pass it over, with conditions as they now are, will pass it over to a time when the land will be allotted, and to a time when the Secretary shall have segregated and divided up the money that belongs to the tribe. That matter is progressing right along now, and, as I understand it, the roll is either confirmed by the Secretary or about to be confirmed, and before another session of Congress could come along and take this matter up and take action on it, the Secretary, under his authority given him in the allotment bill, will have divided the Osage money and completed the division of the land, and these people would be in a bad place.

We therefore think that this session of Congress should take this matter up and dispose of it.

STATEMENT OF DR. H. M. HAMBLIN, OF NEWKIRK, OKLA.

The CHAIRMAN. State your residence and business.

Doctor HAMBLIN. I live at Newkirk, Okla.; I practice medicine.

The CHAIRMAN. You may proceed with your statement.

Doctor HAMBLIN. The Department proof, the church proof, makes it a little stronger. By the church proof Nora James and Angeline James are quarter-blood Osages. Floyd Thompson, Grace Thompson, and Thelma Thompson would be one-eighth blood by the church proof, which we have on file. Maudie Fronkier and Panzy Fronkier would be one-eighth. The Department found the last one-sixteenth. The Thompsons, Floyd, one-eighth and Grace and Thelma one-sixteenth.

Senator CURTIS. What is the degree of blood of all the Belle Auld children on the father's side, of Osage, if you have it not on both sides?

Doctor HAMBLIN. On the father's side it would be, by the church proof, one-eighth; the Department gave one-sixteenth in the Wesoppan case.

Senator CURTIS. Do you know what degree of Osage blood is on their mother's side—who it is admitted was an Osage, and was on the Osage roll?

Doctor HAMBLIN. I should think that would be nearly a full-blood Osage, or at least one-half. I have never looked that up, but I know there were on the roll a great many of them, and on the father's side 88 of their cousins and brothers are on the Osage roll.

Senator SUTHERLAND. I do not understand what you mean by saying one-eighth on the father's side and full blood on the mother s side.

Senator CURTIS. The father was both a mixed-blood Osage and Kaw, but affiliated with the Kaws, and he gave the degree of blood of the Osage part of it, and the mother was an Osage.

Senator SUTHERLAND. It is an admixture of Indian blood?

Senator CURTIS. Yes; two tribes.

The CHAIRMAN. Do you desire to say anything further, Doctor Hamblin?

Doctor HAMBLIN. I do not know that I do unless some member of the committee desires to ask me a question.

The CHAIRMAN. What is the pleasure of the committee with regard to these hearings?

Mr. MERILLAT. Mr. Chairman, we will, of course, desire a hearing on behalf of the Osage Indians, and I would like to say that we have been retained by the Osages in this matter only very recently. It is admitted that this would take away from the Osages from $600,000 to $1,000,000. It furthermore involves conflicting questions as to these 37 applicants. We ought to have an opportunity to examine the record in some respects. We have nothing but the skeleton findings of the Department. The law provided that the findings of the Department should be final, and it has been so accepted with respect to the Five Civilized Tribes. Now, we think we ought to have a fair opportunity, and sufficient time to go through the record before we are expected to make any response.

Mr. LEAHY. I desire to correct one statement of Mr. Merillat, and that is that so far as we are concerned we do not admit that this is taking anything away from the Osage tribe.

Mr. FIELD. It looks as if it was taking it away from the rich ones and giving it to the poor.

The CHAIRMAN. How long do you desire?

Mr. MERILLAT. I think one week after we can see the printed record in consideration of the importance of this case, and the conflicting matters of fact that are involved in several cases, because each branch of these 37 of course stand upon their own facts. There may be certain common opinions of the Department running through several of them, but certainly as to quite a few of these 37 the ground of the Department's action is wholly distinct from its ground as to probably almost a majority of the applicants.

Senator CURTIS. It seems to me that in view of the fact that the Department admits that these people are of Osage blood—as the record shows it is admitted—many of them anyhow, and as the question is largely a legal one, as is contended by the attorneys of the Osages, that they ought to be able to make their reply inside of a week.

Mr. HEMPHILL. I want to say that while there are 37 people here, there are some of them who belong to the same family.

The CHAIRMAN. Would a week from to-day be satisfactory to you gentlemen?

Mr. MERILLAT. Yes, sir.

The CHAIRMAN. I think you will be able to see the record tomorrow or next day, and the committee will now adjourn to meet one week from to-day, Wednesday, May 6, 1908, at 1.30 o'clock p. m.

OPENING OF THE OSAGES' ROLLS.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
Washington, D. C., May 6, 1908.

The committee met pursuant to adjournment at 1.30 o'clock p. m.

Present: Senators Clapp (chairman), Sutherland, Curtis, Stone, and Paynter. Also, Charles H. Merillat, Charles J. Kappler, Ret Millard, J. B. Trumbly, and Wilson Kirk, representing the Osage Nation, and Messrs. Leahy, Miles, Henaphill, Belt, and Hamblin, representing the applicants.

The CHAIRMAN. Gentlemen, I may say in this matter with regard to the opening of the rolls, that, without prejudging it at all, there is a vast difference between the Senate granting the rights and refusing rights, and while a man might be willing to send this matter to the Court of Claims he might not be willing to reject these applications. So the idea has occurred to me to make that suggestion. While the committee, I may say, has never considered the matter, I am rather inclined to think that it would probably be favorable to pursuing that course. Do you incline to that idea?

Senator SUTHERLAND. Yes; I do not see what objection there could be to that.

Mr. LEAHEY. With reference to the court, our idea was that if it went to the court it should go to the circuit court, whose jurisdiction is where the tribe is, and where the evidence could probably be found.

Senator SUTHERLAND. That would be a matter of detail. The question, primarily, is whether or not it should be sent to the court at all. What objection would you have to that, Messrs. Merillat and Kappler?

Mr. MERILLAT. Our position is that the agreement between the Osages and the United States contemplated a trial of all persons whose cases were contested; that trial was had, and these applicants lost. The Osage agreement, when it came to Congress, gave the Osages the right to contest the cases of any person who had been enrolled through fraud. Now, after that agreement was sent here, and after it had been introduced and toward the close of its consideration, the persons who were representing certain of these applicants—the Osage Nation not being represented here—foreclosed the opening up of the rolls on account of fraud by getting inserted a proviso that they could only be opened up for newly discovered evidence. When the matter came before the Osage Alloting Commission, that Commission found that certain evidence that was offered was newly discovered evidence, and opened it up, and with that evidence, which they thought they had the right to consider, which showed fraud, they decided against a large number of those persons

Then the Commissioner of Indian Affairs affirmed that decision, finding that their enrollment had been procured by fraud and that they had no Osage blood. When, however, it came before the Secretary of

the Interior he reversed the finding of the officer who had the witnesses before him. You know the Supreme Court opinions ordinarily are that the finding of an auditor or a referee or a master will not be disturbed on a question of fact, the person who personally takes the testimony being the best judge. But, notwithstanding those two adverse decisions, when it came before the Secretary of the Interior he held that he was so bound and so limited by the act to wind up affairs of the Osages that he could not take into consideration at all a large part of such testimony, and said that, eliminating everything that should be eliminated, under a strict construction of what was newly discovered evidence, there was not sufficient to show fraud by clear and convincing proof, and therefore he reversed the two findings below—those of the Osage enrolling and allotting commission and the Commissioner of Indian Affairs.

Now, if the matter goes to the court on any person's right, the Osage Nation certainly should have the right, as is ordinarily given to every person, to impeach a finding for fraud. If the matter should go to the court we think that what should happen would be that there should be a complete determination with respect to those persons as to whom the Osages lost on this rather technical ground, as I see it, that they must rely to remove from the rolls for fraud solely on newly discovered evidence, as well as those cases which they won. The attorneys for the applicants want to retry all those cases that they have twice lost, but not to retry any case that they have won and cases that they have won purely by excluding evidence of fraud.

Senator SUTHERLAND. It is not a question of what the attorneys want, or the rights of the attorneys, but it is a question of the rights of these parties. Why should these people be denied the right to go into court and litigate their claim because somebody else may have been improperly or fraudulently put upon the rolls?

Mr. MERILLAT. They are claiming their rights through these same people who were put upon the rolls through fraud.

Senator SUTHERLAND. I do not quite understand that. How do you mean?

The CHAIRMAN. I suppose he means where a man is enrolled and a child is claiming the right because his parent has been enrolled; is that it?

Mr. MERILLAT. That is it in part. For example, the Osage council——

Senator SUTHERLAND. I understand what you mean; it is that the judgment of the Secretary of the Interior that these parties who were enrolled and entitled to enrollment would not prevent the court, in the case of these 37 people, from inquiring into their rightfulness to be enrolled. Is that it?

Mr. MERILLAT. It would not, provided he sent the matter to the court, and provided that Congress acted, and assuming now that Congress could act for the present without reference to the tribe; there is perhaps a decided question there in view of the way in which they have their title to the lands.

Senator SUTHERLAND. But what I mean is the judgment of the Secretary of the Interior with reference to the claim of the father, for example, of one of those applicants would not be res judicata upon the question of the right of the child to be enrolled. There would

not be any such gravity in the case as to preclude the court from inquiring into the rightfulness of the judgment.

Mr. MERILLAT. No; but here is the situation: Suppose upon a review of the whole case it be found, for example, that certain persons were not entitled to be upon the Osage rolls—that is, on a view of the whole evidence or of all of the case before it, and yet because the Osage council that was in power about 1889 to 1892 had been induced, as two of the bodies found, by bribery and fraud to put upon the rolls certain persons who are kin to those who are now seeking it, it was held that the Secretary could not go in and exclude them, because he had to throw out a great deal of evidence, and because it was not newly discovered evidence, and therefore he would have to permit those persons on the rolls to remain while excluding those not on the rolls and as to which latter the law permitted all the facts to be proved.

Now, if the matter is to be tried we think that the whole case should be opened and the Osage Nation not foreclosed from showing that certain persons had no Osage blood, and that they got the right that they had by fraud. The Secretary, purely upon this technical proposition that he must rely upon newly discovered evidence and not on documents on file, deprived the Osages of the right of removing those persons from the rolls.

Now, the situation is exactly this, that those persons who got their rights in this manner had two trials just the same as those who did not get on. With respect to those who got on, the finding of the Secretary of the Interior was that it was a Scotch verdict—probably guilty but not proven by sufficient evidence to knock them off.

Senator SUTHERLAND. Then your position is that if the right of appeal is given, it ought to be given to the Osage Nation as well as to these individuals?

Mr. MERILLAT. To both parties.

Senator CURTIS. Then you would want to open up the whole question?

Mr. MERILLAT. We would want to open up the whole question with respect to those persons who, under the act of 1906, had their rights passed upon, because under the terms of the agreement between the Osages and the United States, that agreement contemplated a trial before the allotting commission and the Secretary of the Interior of the rights of all persons who claimed to be entitled to Osage enrollment, including those who had gotten on by fraud and any who had been denied.

Senator CURTIS. It did not go as far as that?

Mr. MERILLAT. That was the agreement, as shown in the print of the bill as it was first introduced. Subsequently, and after that bill had been introduced and had been reported by the House, at the last moment there were inserted the words that they could not dispute those cases for fraud except upon newly discovered evidence. Now those words barred the door to the Osages.

Senator CURTIS. Do you say that that was put in on the floor of the House?

Mr. MERILLAT. I do not say that they were put in on the floor of the House; I can not say that it was done on the floor, but we say it was not in the bill drafted by the Osages and introduced in the House or in the bill as reported to the House.

Senator CURTIS. Are you sure about that?

Mr. MERILLAT. I have the print here.

Senator SUTHERLAND. But it is in the act?

Mr. MERILLAT. It is in the act. Now, those words were inserted by these gentlemen, or some of them, representing the present applicants or they suggested them rather, and as passed the Senate and the House, put in these words without considering, as we think, the full effect of what those words would mean. The Osages had no representative here to explain what would be the result. Secretary Hitchcock denied them an attorney. They could not be represented and the Secretary was not representing them.

Senator CURTIS. My recollection is that those words were inserted upon the recommendation of the Secretary of the Interior, because I was chairman of the subcommittee that had charge of that bill, and my recollection is that the Secretary of the Interior and the Commissioner of Indian Affairs both recommended that those words be put in, because they had already tried the cases and said it would be unfair to open it up unless there was newly discovered evidence.

Mr. MERILLAT. The legislation was construed to mean that when the Osages did discover newly discovered evidence and open up a case, the Secretary could not consider in reaching his decision the old evidence; for example, the testimony of persons who had testified before; they excluded all that, and by this system, as the report of the Secretary of the Interior shows, of the exclusion of a large part of the testimony that showed fraud, the Secretary was compelled by the limitations placed by the act, as amended, on him to find that there was not sufficient evidence to fairly overcome the presumptions of innocence and presence on the rolls, and therefore reversed the finding of the Commissioner of Indian Affairs and the alloting commission that found that lack of Osage blood and fraud had been proved. The whole question turned, as the decision shows, upon how strictly you were going to construe the words "newly discovered evidence," and the Department felt constrained to construe them as strictly as the strictest court would construe them.

Senator SUTHERLAND. Let me ask you one or two questions for my own information When did the Secretary complete this enrollment under the act; do you know about when it was?

Senator CURTIS. The roll has just been completed within a week or two?

Mr. MERILLAT. No; the rolls were supposed to have been completed about a year ago.

Mr. KAPPLER. July 1, 1907; they were closed then, under the act of June 28, 1906.

Senator SUTHERLAND. And these people who are included in this joint resolution were at that time denied enrollment, about a year ago?

Mr. MERILLAT. They were denied the right of enrollment.

Senator SUTHERLAND. I just wanted to get the fact. Now, one other question. The act under which the Secretary made the enrollment provided in express terms that no right of appeal should be allowed either party?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. Under the general law, if it had not been for the special provision of this act, both parties would have had the right of appeal?

Mr. HEMPHILL. You mean the right to go into court?

Senator SUTHERLAND. Yes; the right to go into court, or some other way by which the action of the Secretary would be reviewed.

Mr. MERILLAT. It it claimed they had the right; that is perhaps a question under the decisions and the statutes and treaties as far as relates to the Osages, but we will concede for the moment that they had.

Senator SUTHERLAND. Yes. Now, I want to ask you if you know why the right of appeal was denied under this act, or the right of review, rather, in the court?

Mr. MERILLAT. I take it for granted that that was in pursuance of a general policy which the Government or Congress had adopted in making the rolls of the Five Civilized Tribes. There were any number of persons in the Five Tribes who were very desirous of having the court pass upon their cases, but it was held that there must be a final tribunal, and finally that these matters were such that they could be better passed upon by the Executive Departments than by the courts. As a matter of fact, resort had been originally permitted to the courts, but the experience had been so unsatisfactory that Congress rejected that and repealed the provisions as to court review and made the decision of the Secretary of the Interior final as to the Five Civilized Tribes rolls.

Now, it did that with respect to those who are highly civilized and versed in diplomacy and law, such as the Cherokees, who are at the height of legal and diplomatic ability among the Five Civilized Tribes. When it came to the Osages, Congress adopted the very same plan, presumably, as I take it, for the reason that they did not want these matters to be held down to the strict rules of evidence, and furthermore because of some local sentiment in the court down there, which they feared would interfere with the proper decision and adjudication of the court.

That is one reason why we would prefer your suggestions with respect to the Court of Claims to the courts down there. It is a very easy thing to dispose of somebody else's property, as every court has found when it has had a will case, or something of that kind, under consideration; but the reason I have stated, namely, the legislation with respect to the Five Civilized Tribes providing for their dissolution and the winding up of their affairs, was the precedent that resulted in the Osage allotment act of June 28, 1906.

Senator CURTIS. Of course you know this bill was drawn by the Osages themselves.

Mr. MERILLAT. The bill was drawn by the Osages, but it did not have in it these words with respect to newly discovered evidence, and the print as first introduced shows that it did not, nor as it was reported to the House. But the words limiting the investigation of alleged fraudulent enrollments so as to exclude all but newly discovered evidence was added, and that amendment clamped the lid down on investigation of the fraud that had frequently been perpetrated, and which, notwithstanding that clamp, the allotting commission and the Commissioner of Indian Affairs found had been practiced. The Secretary of the Interior, however, found that he ought to return a Scotch verdict since the act compelled him to exclude evidence which the lower bodies had considered.

Mr. HEMPHILL. I want to say, with the permission of the committee, with reference to the Five Civilized Tribes, that that statement of counsel is correct, except that they found that such gross injustice had been done by denying them the right to go to court that in the Cherokee case the Secretary referred the matter to the Court of Claims under the Bowman Act and Congress then provided for an appeal in the case of what is known as "intermarried white people," and both the Court of Claims and the Supreme Court of the United States overruled the Department of the Interior and the Commissioner of Indian Affairs, and the same is true with reference to the Choctaws and Chickasaws, where they permitted them to go into court and contest the rights, established a special court and thus established another right for them to go into court.

Mr. MERILLAT. Please do not understand me as assenting to the proposition that we should go into court on Senate Resolution No. 70. We are not assenting to that. We want those rolls kept closed, just as in the case of the Five Civilized Tribes. You are closing those rolls down hard and fast, notwithstanding the fact that some persons never had their cases passed upon at all; that many were overlooked through oversight, and that in the closing four weeks of the cases hundreds of cases were rushed through without any consideration whatsoever. It was held by Congress that there should be a time for closing; that they had to close them finally. As I say, you have closed those Five Tribes' rolls finally and for good, notwithstanding it is admitted that persons even did not have their cases passed upon. and notwithstanding it is admitted that in the last four weeks of the consideration of the matter there were cases passed upon in which they simply turned them over and affirmed everything that was done by the Dawes Commission, and where they even had made in the last two weeks a new rule of evidence, namely, that they would on appeal affirm every case upon which the Dawes Commission had decided. These things the Secretary was forced to do owing to the rush of closing the rolls. Our firm probably has opposed as strenuously as anyone the Department where we thought it was making a mistake of law; but on the whole the Interior Department has splendidly performed a vast and difficult undertaking in administering the enrollment and affairs of the Five Civilized Tribes. Congress is insisting that those rolls shall be kept closed notwithstanding what necessarily went on or occurred in the closing days; yet here, with respect to the Osage, where there was the fullest opportunity of consideration, where everybody had his day in court, where everyone had his case squarely and specifically passed upon and then reviewed and rereviewed, it is proposed to reopen the cases the Osages won. As to those 37, or a large portion of them included in Senate Resolution 70, their cases had been decided in March, 1905, but after this act was amended, so it would not take effect until its passage, these gentlemen appearing for the 37 applicants filed formal motions for review without anything in the shape of newly discovered evidence or anything else, simply putting their motions on file fifteen months after the cases had been decided, asking for a rereview of something that had been decided, and therefore had their cases pending, and when they again lost they now ask you to send their cases to a new tribunal. They gained new consideration by filing a formal stock motion saying the former decision was wrong for errors of law and errors of fact, and

thus obtained new trials. That can be verified by the official records. I had not time to examine the records to see if this is true of all the 37, but it is true, for example, with respect to the Strattons, the Revards, the Hunts, the Crumps, and others.

The CHAIRMAN. I think you had better now proceed with your argument as you originally contemplated.

Mr. LEAHEY. Mr. Chairman, before Mr. Merillat proceeds I have two papers that I desire to file. They are two affidavits which identify Mrs. Rosa Marr as being Rosa Loveland, who formerly made the application. One of the affidavits is by her sister, Mrs. Julia A. Hackleman, who is now on the Osage roll, and who testified to knowing that the person now known as Rosa Marr was at the time of making the application Rosa Loveland. The other affidavit is by Rebecca J. Varnell, who testified to the same thing. I offer these for identification, and ask that they be put in the record.

The CHAIRMAN. That may be done.

The papers are as follows:

STATE OF OKLAHOMA, *Osage County, ss:*

JULIA A. HACKLEMAN, being first duly sworn, on oath says:

My name is Julia A. Hackleman; my former name was Julia A. Stephens, prior to my marriage with Mr. Hackleman; I am a member of the Osage Tribe of Indians and enrolled on the rolls of said tribe; I am a sister of Mrs. Rosa Marr, who is an applicant for enrollment with the Osage tribe of Indians; I know personally that at the time Mrs. Marr made her application she was then Rosa Loveland, but that since said application she has married Mr. Marr, and her name now is Mrs. Rosa Marr; I know of my own knowledge that Mrs. Rosa Marr and Mrs. Rosa Loveland are one and the same person and that the change in name is due to her marriage with Mr. Marr.

JULIA A. HACKLEMAN.

Subscribed and sworn to before me this 27th day of April, 1908.

A. B. LAFFOON, *Notary Public.*

My commission expires July 8, 1911.

STATE OF OKLAHOMA, *Osage County, ss:*

REBECCA J. DARNELL, being first duly sworn, upon oath says:

My name is Rebecca J. Darnell; my former name prior to my marriage with William Darnell was Rebecca J. Vadney; I am enrolled as a member of the Osage tribe of Indians and enjoy the privileges and benefits as a member thereof; I am a niece of Mrs. Rosa Marr, who is an applicant for enrollment with the Osage tribe of Indians; at the time of making her said application Mrs. Rosa Marr was then Mrs. Rosa Loveland, and the application was made in the name of Rosa Loveland; that I am personally acquainted with the fact that Mrs. Rosa Marr made her application in the name of Mrs. Rosa Loveland, whom she then was; that since she made this application she was married to a man by the name of Marr, and that the former Rosa Loveland is now Rosa Marr, and that they are one and the same person, and that I have personal knowledge of the facts written above.

REBECCA J. DARNELL.

Subscribed and sworn to before me this 27th day of April, 1908.

[SEAL.] A. B. LAFFOON, *Notary Public.*

My commission expires July 8, 1911.

ARGUMENT OF CHARLES H. MERILLAT ON BEHALF OF THE OSAGE NATION.

Mr. MERILLAT. Mr. Chairman and gentlemen, I first desire to offer in the record a resolution adopted by the Osage Nation, which I will hand to the stenographer, which recites the fact that the Osage allotment act of 1906 had been agreed to by the Government of the

United States and the Osages, and that it provided for enrollment and other things that had been accomplished, and that it was their wish that their allotments be completed as soon as possible, and that the lands be turned over to the individual members. It then resolves that Congress shall be requested to defeat Senate resolution No. 70, and that the provisions of the allotment act, as agreed to by the United States and the Osage Nation, shall be strictly adhered to and that a copy of the resolution be sent to Congress. Attached to this are a number of petitions signed by members of the tribe.

RESOLUTION

Whereas on the 16th day of March, 1908, Senator Gore, of Oklahoma (by request), introduced a joint resolution No. 70 providing for the enrollment of certain persons as members of the Osage tribe of Indians, and for other purposes, giving the names of the persons asking to be so enrolled; and

Whereas we are well aware that none of the names in the bill mentioned are justly entitled to enrollment, and further, that babies born since July 1, 1907, to parents whose names are already on the roll with undisputed rights, have been denied enrollment; so why should Congress authorize the Secretary of the Interior to place on the Osage tribal roll people whose rights and applications have been denied and rejected by the Osage National Council, the Secretary of the Interior, and the Commissioner of Indian Affairs at Washington;

Whereas in the allotment act approved June 28, 1906, the following was agreed to by the Osage tribe unanimously, and we earnestly request that the same be strictly adhered to: "That the roll of the Osage tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Oklahoma Territory, as it existed on the first day of January, nineteen hundred and six, and all children born before January first, nineteen hundred and six, and July first, nineteen hundred and seven, to persons whose names are on said roll on January first, nineteen hundred and six, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January first, nineteen hundred and six, including the children of members of the tribe who have, or have had, white husbands, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof;" and

Whereas if this bill becomes a law it will rescind that portion of the allotment act giving the Secretary of the Interior the power to revise and make final approval of the Osage rolls, and as this is contrary to the intent and wishes of the Osage people, we ask for the defeat of same in Congress; and

Whereas it is the wish of the Osage tribe of Indians that their allotments be completed as soon as possible and the lands turned over to the individual members for their own use:

Now therefore be it resolved, By the Osage national council in special session assembled, this 31st day of March, 1908, that the Congress of the United States be, and is hereby, requested to defeat Senate resolution No. 70, as introduced by Senator Gore on March 16, 1908; and

Be it further resolved, That it is the wish and sentiment of this body assembled that the provision of the allotment act, as approved June 23, 1906, be carried out and strictly adhered to.

Be it further resolved, That a copy of this resolution be mailed to the chairman of the Senate Committee on Indian Affairs, to the chairman of the House Committee on Indian Affairs, the honorable Secretary of the Interior, and the honorable Commissioner of Indian Affairs.

I, Ne kah wah she tun kah, hereby certify that the foregoing resolution was passed by a unanimous vote of the Osage business committee or council in session at Pawhuska, Okla., on March 31, 1908.

Signed at Pawhuska, Okla., this April 2, 1908.

NE KAH WAH SHE TUN KAH (his x mark),
Principal Chief, Osage Nation.

Attest:
HARRY KOHPAY,
Secretary and Acting Interpreter.

PETITION.

We, the undersigned, adult members of the Osage tribe of Indians, do hereby heartily indorse the resolution of the Osage national council of March 31, 1908, herein attached, asking for the defeat of the Senate resolution No. 70, introduced by Senator Gore, of Oklahoma, by request; that it is our sincere wishes that said resolution of the Osage council be strictly adhered to.

Tom Big, chief; Charles Pettit, Charley Wah rhe she (his x mark), Herman McCarthy, Me lo to Moie (his x mark), Francis Claremore (his x mark), Amos Hamilton, Gilbert Cox, Hah Moie (his x mark), Silas Sanford, Jar Red Eagle, Brown Tsa pah shin kah (his x mark), Wah sho shoh (his x mark), Roy James, Ne kah ke pah nah, Edgar McCarthy, Albert Penn, John Oberly, John Abbott, Claude Smith, Lew Netore, Olla hak moie, Ta wa he old man, Ya he tak ka she, Sho kah moie, Wa kah tak kak, Luthur Harvey, Ho kah she he, Me kah wa tak hak, Wiley Fish, Ta hak hah he, She She, Dan G. West, Son sac pah kah, Jack Wheeler, A Pe Sah tse, James White Horn, Fred Penn, En goah Kah Shin Kor, Mo sa me pah, Moh e koh moie (his x mark), He se moie (his x mark), John Blackbird (his x mark), Wah shin wah hah (his x mark), Che sho hun koh (his x mark), Oliver Martin (his x mark), Opah shoe poh (his x mark), Moh hoh groh (his x mark), Shon kah tsa oh (his x mark), Moh she tah moie (his x mark), Ko she wah tsa (his x mark), William Fletcher, Edgar Foraker, Don Dickinson, Tilton Ent ok ah, Sha wah pe (his x mark), Lurther Elkeins, Frank Cannon, Tony Towsend, Pun kah wah tau kah (his x mark), Sou sa gruh (his x mark), Edd Miller, Eugene Butler, Chas. Grant, Bismark Mosier, Dominic Daniels, To wah E. he (his x mark), Hun Kah hop py (his x mark), George Bighcart, Joseph Mason, Ke ne Kah (his x mark), Joseph Daniels, Alfred McKinley, Wah hah geh hah (his x mark), Ne kah lim pah (his x mark), Earnest Roe, Clinton Big Heart, Jake Mosier, Eves Tall Chief, Henry Tall Chief, Kah wah e (his x mark), Kah wah ho tsa (his x mark), Gurney E. Miller, Alex. Tall Chief, Perry King, Bro ki he kah (his x mark), Andrew Barry, Herbert Spencer, Alex Tall Chief, jr., Daniel McDougan, John Claremore, Pun kah shin kah (his x mark); Thomas S. Weather, Peter Cf Charob, Judy Lawrence (his x mark), Fred Lookout, Willie Shop, John Nah hah scah she (his x mark), Edward Bunt, Piece St. John, Etsa sta hah hah (his x mark), Henry Ko she he (his x mark), Richard Firewalk, Big Eagle (his x mark), Orlando Kenworthy, Wye ee hah kah (his x mark), Wye E mah she (his x mark), Chas. White Tail (his x mark), Howard Buffhoies (his x mark), Long Bow (his x mark), Robert Panther (his x mark), John Lookout, Wm. J. Payor, Pah se tah pah d & d, Rev. John A. Logan (his x mark), Antoine Albert, Louis Bighorse, Steven Neal, Alex Marshall, Lawrence Gray, Joseph Cannon, Charley Dunn (his x mark), John Mo Grala (his x mark), Paul Albert, Tsopoinkah (his x mark), Sop pe ke a (his x mark), Antoine Pryor, Clarence Gray, John Straight (his x mark), George Pitts, Joe Red Eagle (his x mark), Arthur Bonnicastle, Paul Buffalo, (his x mark), Henry Prather (his x mark), Bacon Rind, Tom West (his x mark), Chas. Coleman, Louis Pryor, A hu sha kah (his x mark), Nun tsa wah hu (his x mark), Red Corn (his x mark), Benj. Mashunkashey, Peh tse moie (his x mark), Augustine F. Chouteau.

Now, with respect to the Osage allotment act, the position of the Osage Nation is that said allotment act is in effect an agreement between the United States and the Osage Nation, having been drafted by the Osages (without certain amendments) at the request of the United States, and that that agreement, which has been entered into in good faith, should not be violated by the United States to the detriment of the Osages by giving another right of action against them by all persons who lost under the agreement between the Osage Nation and the United States. They take the position that these people now applying again had full, complete, and ample opportunity to present their case. They take the position, furthermore,

that as to a number of those applicants they themselves are foreclosed and estopped from objecting, because they were present and presented their views, and also through their attorneys, and raised no objection, but acquiesced in the legislation that was enacted and secured amendments. Now the Osages say that if anything is to be res judicata, is to be regarded as settled, that it should be those things as to which the Osage Nation won as well as to those things the Osage Nation lost. If, however, you are going to violate the agreement that the Osages and the United States had—for this was substantially that, just the same as the agreements with the Five Civilized Tribes—then they say you should give them (the Osages) the right of contest that outside of an Indian nation is always given to a person, and probably is given even to an Indian, namely, the right to impeach a finding for fraud.

Now, those persons who are here claiming to be Osages found their rights to a very large extent upon the fact that certain other persons are now on the Osage rolls, and if those persons, they say, are found upon the Osage rolls that then they, the applicants, are equally entitled with those others.

The position with respect to the Osage people is this, that if there was a full, fair opportunity to pass upon and determine this question a great many of those persons through whom these applicants are claiming would be stricken from the rolls, and that the only reason they were not stricken from the rolls was because of an amendment made toward the close of the consideration of this measure at the instance of some of those persons who had been parties to the fraud and who succeeded in inducing the Government to put in a provision which, it was deemed, effectually prevented the Osage Nation from striking off any names from the rolls because it would inhibit them from introducing in the record a large part of their evidence.

We have this fact to start with. Every single one of the cases now before the committee was fully and fairly considered. There is not a case embraced in this list of thirty-seven that has not been most thoroughly thrashed out and considered, first in the initial instance, then considered below and on appeal, and then reviewed, and in many instances, upon re-review; not only considered once, but considered twice.

Senator SUTHERLAND. Let me ask you a question; perhaps I misunderstand the situation. I understood that in some of these cases at any rate the Secretary of the Interior declined to enroll them on the sole ground that the Indian council had declined to do so?

Mr. MERILLAT. No, sir; the Secretary of the Interior refused to enroll them on the ground that they were not entitled to enrollment and had not shown it.

Senator CURTIS. The Commissioner admitted to this committee that he had declined to recommend their enrollment because the tribe had voted against their enrollment, not admitting that they were of Osage blood. He admitted that right here to this committee.

Mr. MERILLAT. I do not know to what you refer. As the record shows, he refused to admit a number of them, notwithstanding they had some small degree of Osage blood, because they had not in other respects come within the rules that entitled them to it. The

Secretary of the Interior's position in respect to that is this: That the finding of the Osage national council adverse to these persons is entitled to a high degree of respect and consideration, and that no person should be put on over the protest of the Osage national council without, as he terms it, an indubitable legal right to be upon the Osage roll; that the denial by the Osage national council carries with it a strong presumption against the persons' rights and that they must show other right.

Senator SUTHERLAND. As I understand, according to your statement, even if the Secretary of the Interior did not decline to enroll them upon the sole ground that the council had declined to enroll them, he at any rate gives such weight to the finding of the council that he imposed a greater burden of proof upon these applicants than he otherwise would have done because of the decision of the council. That is correct anyhow, is it not?

Mr. MERILLAT. Possibly, with a distinction. They say that where the Osage council places a person upon the roll, that person shall not be disenrolled only for good cause shown, but if the Osage national council—which under its constitution has the right of action in this matter—refuses to do it, then they will have to come within some well-recognized exception.

Senator SUTHERLAND. The Secretary did give rather extraordinary weight to the decision of the council holding that these people were not entitled to be enrolled and the question in my mind is this, the council representing the Indian tribes were upon one side of this controversy and those people upon the other side of it?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. So that in going before the council they were submitting their claims to the judgment of the other party to the controversy, and it would seem that that would be opposed to the fundamental principle that no man shall be the judge of his own case, and if it is true that the Secretary of the Interior afterwards held that these people should not be enrolled because such a body had held that they should not be enrolled, it would seem to me they had, on the plainest principles, been denied justice, and were at least entitled to a fair decision on the merits.

Mr. MERILLAT. Congress recognized the Osage rolls in the act of 1906 and the Secretary followed the law. The Supreme Court of the United States in two or three decisions has taken a different view from that of Senator Sutherland with respect to the Five Civilized Tribes, and with respect to those Indians who are similarly situated as the Five Civilized Tribes. The Supreme Court holds that this property is communal property and that the members of the commune have the right, primarily at least, to say who shall be entitled to it, and so far does the Supreme Court go that in the case of Roff *v.* Burney (168 U. S.) that it says if the Chickasaw Nation should admit a person to citizenship by adoption and give him the right, the same nation had the right to decitizenize him and take away his enrollment, and that no provision of the Constitution or laws of the United States was violated when they did it.

Senator SUTHERLAND. That is a little different.

Senator CURTIS. That applies to an adopted citizen.

Senator SUTHERLAND. After all the allotment question is as to the ownership of certain property, certain real estate, or ownership, depending of course upon certain facts?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. Now, that question is fundamental and is a judicial question, is it not?

Mr. MERILLAT. That question is, certainly; I think so.

Senator SUTHERLAND. In an ordinary case at any rate.

Mr. MERILLAT. I think in an ordinary case that would be true.

Senator SUTHERLAND. In the ordinary case a question of that kind is fundamentally a judicial question and it ought not to be finally determined by an administrative officer of the Department. It ought fundamentally to go to a court, ought it not?

Mr. MERILLAT. Congress could create the tribunal and did so, but with this limitation, Senator, that the rolls as they existed prior to the time there was a strong inducement to put on or put off any persons are entitled to prima facie weight. Now, when you consider the fact that none of those persons, except two or three adopted cases, were ever on the Osage rolls when you go back twenty-five or thirty years or more ago and find that to be an Osage then meant about two dollars and a half each six months, and no strong inducement to the falsification of the rolls—then you have certainly a situation where those rolls, as they have long existed, were entitled to prima facie weight in any court. They are the fundamental thing; they are the basis from which everything has proceeded and the Supreme Court in several decisions has said that those rolls were entitled to just the weight that the Secretary of the Interior gave them. We have got to adopt, Senator, if you will pardon me, some legal principle, something that is established, upon which to pass upon these rights.

Now, when it comes to the rolls, those were the documents Congress has always said we shall go by. We will not say that those rolls are conclusive, that they are absolute; that you can not go behind them, except with reference to one or two rolls. Congress, with relations to the Cherokees, said the roll of 1880 was so far back and made under such circumstances that you shall not impeach said roll, and the fact that a certain person is found on that roll is absolute and binding upon all parties, and it can not be impeached.

Now, similarly, we think that a like doctrine should be applied to the Osage rolls, certainly as far back as 1881, and in the allotment act of the Osages and in the bills that were introduced you find specific utterances by Congress that these rolls shall be entitled to the weight that the Secretary of the Interior gave them, namely, that they were prima facie correct. Are you going to make an agreement with the owners of some communal land that their rolls of those entitled to share in the division of the lands shall be entitled to weight, they being the owners of this land, buying it with their own money, and that when the Secretary, the legal officer to whom you commit the matter of enrollment, decides that he will give due weight to the rolls, hold they were not entitled to weight in deciding who were entitled? The fact of the matter is that throughout the Secretary has denied enrollment to those persons now claiming. He has done it under settled judicial decisions—decisions settled with respect to the Cherokees and the other Five Tribes whose constitution and laws and title to their lands were substantially identical with the title of the Osages to their land; as to the Cherokees necessarily so because the Osages bought their land from the Cherokees.

Senator CURTIS. Yes; but you know in this agreement they did not give the members of the different tribes the same right that they did the members of the Cherokee Nation, in this, that if a man had a right to enrollment as a Cherokee or a Seminole, he was given the right to select whatever tribe he would join or affiliate with thereafter. No such right was given to a man who might be part Osage or part Cherokee, or part Osage and part Potawatomi.

Mr. MERILLAT. It has been held in a number of decisions that a man could not be a member of several tribes.

Senator CURTIS. I did not say that; I say if a man was by blood entitled to enrollment in either one or two tribes under the Five Tribes acts he was given the right to select which tribe he should join.

Mr. MERILLAT. Yes, sir; but he was——

Senator CURTIS. But they did not do that with the Osages?

Mr. MERILLAT. But he was not given the right to select his tribe, to decide which he would go to or which he would join and out of which he would take his profits, the division that he should have, and after he had gotten all that he could out of that one tribe to go to some other tribe and want to share with that.

Senator CURTIS. There are none of those people claiming that right, are there?

Mr. MERILLAT. Yes, sir; the Aulds and Plomondon. With regard to all of the Five Civilized Tribes it was said that there was a fixed named date after which no child born should be entitled to participate. With respect to no tribe is it held that if a person is born, and is a member of that tribe, being born into that tribe and a member of it, that they can afterwards, of their own act and against the will of another tribe, go over and claim that through blood they can have rights in that other tribe. The decisions of the law officers of the Interior Department, from Judge Vandevanter down, have been that if a parent has certain rights in a tribe, any children born to him are children of that tribe and take the same rights there. It is not the situation of a person who, being entitled to property in one of two tribes should say: "I elect to be a member of this;" and that is the distinction, I take it, between the Auld children, or the reason why they can not get rights in the Osage country.

Now, in what is known as the Banks case, a Sac and Fox, of Missouri, Judge Vandevanter had that matter under consideration and he held that under the act of 1887 (the Sac and Fox not being one of those tribes excepted by the provisions of the act of 1887) Banks did not lose his rights by going out into the American body politic and becoming a citizen. He said he still had those rights, but with respect to the children that were born in the United States, after he became a citizen of the United States, those children did not have any tribal rights because they never had been born into an Indian tribe, and therefore had no right. That is a case which I take it is on all fours with the Auld children.

Senator CURTIS. Not at all, because the parents of the Auld children never did become citizens of the United States.

Mr. MERILLAT. They did by the allotment act, I believe. The Senator is possibly more familiar with it than I am.

Senator CURTIS. They are not until they get certificates, and they have not obtained their certificates.

Mr. MERILLAT. Even so, still as to those children, if they were not citizens of the United States, the principle would be applicable equally that they are citizens of the Kaw tribe, having been born into it, but citizens without property rights, just the same, for example, as a Choctaw child born to-day has no Choctaw right because——

Senator CURTIS. You are mistaken there. The Auld children are not Kaws; they are Kaws by blood, but they are not on the Kaw roll and never were on the Kaw roll; they are Osage, just as much or more Osage than they are Kaws, and they are not on the Osage roll.

Mr. MERILLAT. Were not their parents on the Kaw roll?

Senator CURTIS. Mrs. Auld's mother was on the Osage roll and her father was on the Kaw roll. The mother of the Auld children was on the Kaw roll, but the children never were on the Kaw roll.

Mr. MERILLAT. At the time those children were born, on which roll were they and which tribe did they affiliate with?

Senator CURTIS. The children were never on any roll. The mother was on the Kaw roll.

Mr. MERILLAT. The usual rule is that an Indian child follows the status of its mother.

Senator CURTIS. Not since 1897.

Mr. MERILLAT. That I think is the decision of the Department. There may have been a change of the date. I know that was the old rule. But was the father or mother of the Aulds who are applying on the Osage roll?

Senator CURTIS. The mother of Mrs. Auld was on the Osage roll.

Mr. MERILLAT. Was not the mother on the Kaw roll?

Senator CURTIS. Mrs. Auld was on the Kaw roll, but her mother was an Osage and on the Osage roll.

Mr. MERILLAT. But at the time the children were born their parents were Kaws and their children were born of course to the citizenship of the parent; they were born, in other words, to Kaw citizenship.

Senator CURTIS. Now, if you apply the same rule that was applied in the case of the Five Civilized Tribes then those children would have the right to select their tribe.

Mr. MERILLAT. They would not have, for the reason that their right of selection had expired just as a child born October 2, 1902, to a Choctaw woman gets no rights because they are cut off; just the same as an Osage child born to-day gets no property right because the Osage rolls are closed and have been for eight or nine months.

Mr. HEMPHILL. You forget there, Mr. Merillat, that Congress has provided that all the after-born children of any one of the Five Civilized Tribes shall be enrolled; every child born since the roll was closed, as of September 1, 1902, is to come in, and up to April, 1905, is to be enrolled.

Mr. MERILLAT. You are correct in that; but there were specific conditions made with respect to new-born children up to September 1, 1902, and then an extension as to new borns, but the rolls now as to all of them are closed by Congressional action. The Creeks have a $4,000,000 claim against the United States arising out of the fact that as trustee and guardian of those Indians the United States passed legislation relating to new borns and other matters, which resulted in a $4,000,000 deficit in the Treasury through the trustee

paying out money in cases in which he did not have the right to pay, to persons who were not entitled to it, and now he has not enough money in the Creek treasury to meet the situation.

Mr. HEMPHILL. That shows the importance of having this question determined now.

Mr. LEAHEY. With reference to the Auld children, those children were born previously; they had been denied enrollment with the Kaws by reason of an interpretation placed upon the act of June 11, 1907, by the court, which decision, after the close of the Kaw roll, was reversed, and children who were in exactly the same condition that those children were in their tribe were permitted to share in the tribal rights of their tribe. Those children, because of an opinion given by the Secretary of the Interior, in which he was interpreting the act of 1897, were denied all their Kaw rights; denied all their rights to be enrolled with the Kaws, and they were born previous to the passage of the Kaw allotment bill.

Senator SUTHERLAND. After all, in my judgment, the whole matter comes back to the question as to whether or not under the circumstances of this case we ought to send the matter to the courts. I do not know how the other members of the committee feel about it; I am speaking for myself, but I do not think the committee ought to undertake to investigate the merits of these cases and undertake to say either that they should or should not go upon the rolls, because a hearing of this kind is always unsatisfactory. Counsel argue it; we do not have witnesses; we have not the facilities and the opportunities of passing upon evidence and determining questions of fact as the courts would have. So that, as far as I am concerned, I am perfectly willing to say that I would not vote to report this bill in its present shape. I would not undertake to say that these people ought to be upon the roll, and I do not think the committee ought to undertake to say that, and that consequently the whole question, in my mind, is whether we ought not under the circumstances send it to the courts, and for my part that is the only question that I care to hear about.

Senator CURTIS. I feel the same way.

Mr. MERILLAT. Will you permit me a few words upon that subject? You create a court of limited jurisdiction—you did that in this case—and by some agreement with those tribes you made the Secretary of the Interior the determining body. We took evidence, any quantity of it, before officers who are men of standing and men of intelligence and men who are thoroughly familiar with this Indian work—the work of Indian citizenship. Now, would you say that it would be fair to open these rolls made under that agreement, with respect to persons who had twice had every issue in their case before a tribunal that had been selected with the knowledge and assent of themselves, and yet you propose to deny any reopening in the Five Civilized Tribes, where many of the persons, it is admitted, were found to be entitled to enrollment, and yet through oversight their names were not put on the roll. Furthermore, it is true, with relation to the Five Civilized Tribes, that many of those persons did not have their cases considered at all.

There were a number of them, a large number of them, who had their cases passed upon in the last week or two weeks with such celerity and speed that sometimes a record as big as a Statute at Large

would be passed upon in five minutes, and necessarily had to be; and so far is that true that we have won against the Secretary of the Interior, for we represent practically everybody who has succeeded in mandamus. We have won a number of those mandamus cases under an act of the Secretary in striking persons from the roll, and yet we can not reach probably three or four hundred persons in exactly the same category as those persons who were put on the roll and then stricken off. Why? Because those persons were ordered put upon the roll, but before the clerical work of inscription of their names upon the roll, so as to make them finally approved rolls and signed, could be completed, along came a decision of the Attorney-General which wiped out everything that had been done before. The decision was largely misconstrued by the Department, as the Department of Justice claims, and those people were denied. Yet you would not open those rolls, but propose to open the Osage rolls, where there were only about 200 contests, and with most full and ample opportunity given for hearing.

Senator SUTHERLAND. You are making an argument to the effect that the committee did wrong in that particular case in refusing to open the Choctaw and Chickasaw rolls, as I understand you?

Mr. MERILLAT. I am saying this: That the Osages have an infinitely stronger case than did the Five Civilized Tribes, because all those cases in Senate resolution 70 had their day in court, had abundant and ample opportunity to be heard, and in the Five Civilized Tribes many people never did have it, and Congress said——

Senator CURTIS. You are entirely mistaken in saying they did not have time with respect to the Five Civilized Tribes. We first gave them an opportunity in 1896. They had over twelve years to present their claims for enrollment, and after they had twelve full years, and after the local court had passed upon the matter, and after the Commissioner passed on it, and after the citizenship court had passed on it, we passed another act permitting every man to come in who filed an application prior to December 1, 1905. That is what was done.

Mr. MERILLAT. And the fact remains that owing to no failure or neglect on the part of applicants who had their cases passed upon, the result was that they were not considered and passed upon by the Secretary, who had expected of course still further time for the completion of the rolls and repeatedly asked it. Now, I say that when these persons, through no fault of theirs, have not had their day in court you should not close these rolls and yet open again the Osage rolls. The Secretary of the Interior had a tremendous task to perform in the Five Tribes rolls. That work, notwithstanding some errors, on the whole was splendidly done, but in the nature of things and of the expectation that was unrealized of an extension of time for closing the rolls many persons have suffered injustice.

Senator CURTIS. There was not a man down there who did not have his day in court, and if he did not have it was either his fault or his lawyer's fault.

Mr. MERILLAT. The cases were pending, but they were not passed upon, and they came up in regular order. The cases were filed and they were before the Department. Now, that was the situation, while here you have the situation that every one of those persons claiming Osage rights has had his rights passed upon——

Senator CURTIS. Right at that point you asked the Senator—and *I do not know* if he wants to answer it—if the Secretary of the Inte-

rior had considered the testimony, or the Commissioner of Indian Affairs, I should say these people should be foreclosed, and when the Commissioner of Indian Affairs admitted before this committee in the Crow hearing that he had decided upon the recommendation of the tribal council, and that is why most people were left off, then I think we ought to give them an opportunity to be heard by somebody that will review that testimony.

Mr. MERILLAT. I desire to offer in the record the decisions of the Commissioner of Indian Affairs, the Allotting Commission, and the Secretary of the Interior, squarely considering these cases and finding that they were not entitled, after full consideration. I will put that into the record. It is the written signed decision of the executive officers.

Senator CURTIS. The Commissioner of Indian Affairs admitted right here in answer to a question asked him that those persons that were admitted of Osage blood were left off because the council refused to admit them, and that that was what influenced him.

Mr. MERILLAT. The record was signed over the signature of the Commissioner that he had refused to admit them because they had not affiliated with the tribe, and that their admission under those circumstances would have been in violation of the Osage constitution. He gave the weight to tribal council action that is proper but not conclusive weight. He refused them admission upon the principles that have been settled in the Five Civilized Tribes cases—settled with respect to the Cherokees, for example, whose laws and constitution and whose title to their land was identical with that of the Osages.

Senator CURTIS. But whose conditions were different.

Mr. MERILLAT. Whose physical conditions——

Senator CURTIS. The Five Civilized Tribes had a right by law to settle the question of citizenship. The Osages were never given that right—not by law.

Mr. MERILLAT. The Supreme Court of the United States says they did have that right.

Mr. HEMPHILL. The Osages?

Mr. MERILLAT. They never decided the Osage case, but the Osages had the same right and the same title as in other cases that were decided and whose principles are applicable.

Senator CURTIS. Oh, no; the law gave the Five Civilized Tribes the right to enact their own laws and to settle these questions. Now, while it is true that the Osages bought their lands from the Cherokees, Congress never did by any treaty give them the right to enact their own laws and settle questions of that kind.

Mr. MERILLAT. The agreement by treaty enabled them to buy the land of the Cherokees; the Osages took their own money and bought the land of the Cherokees, and that title to them was a title in fee simple in common—that is, the title that the Osages had to their land was a title in fee simple in common, and the Supreme Court, in a number of decisions with respect to exactly analogous cases, has so held.

Senator CURTIS. You had better proceed now with your argument.

Senator SUTHERLAND. Let me understand one thing; I may misunderstand it. I had the understanding that in the case of the Five Civilized Tribes they had been given by legislation the opportunity of

going to some judicial tribunal upon the question of enrollment. Is not that correct?

Mr. MERILLAT. No, sir; that was taken away from them.

Senator SUTHERLAND. The citizenship court?

Mr. MERILLAT. It was taken away from them. It was a special case that was sent there. The effect of all the laws with respect to the Five Civilized Tribes was that the Dawes Commission, giving certain specified weight to the rolls of the Five Civilized Tribes, originally passed upon the right of a man to be upon a roll of any one of those tribes; that if either party was aggrieved by a decision of the Dawes Commission, a right of appeal lay to the Commissioner of Indian Affairs, and from him within a certain specified time, either party had a right of appeal to the Secretary of the Interior, whose decision, it was held, should be final, and that the rolls as he, the Secretary, should approve them, should be conclusive as the basis on which the allotment of lands and funds should be made.

Now, when it came to the Osage cases there were very few contested cases; the rolls as they existed in 1881 were adopted; certain weight was directed to be given to those rolls, and either the nation or the individual applicant had the right of appeal from the Osage Commission to the Commissioner of Indian Affairs, and then, if still aggrieved, either party had the right of appeal to the Secretary of the Interior, and the law said that his determination of the matter should be final.

When the Secretary of the Interior came to determine the right of Osage applicants he had the benefit of the years of experience of himself and his subordinates in the administration of the Five Civlized Tribes rolls, and he acted in the light of that experience, and furthermore the Osage constitution and the Cherokee constitution and laws were substantially identical. Now in the Osage constitution, adopted in 1881, it is provided:

> And that whenever any citizen shall remove with his effects out of the limits of this nation and become a citizen of any other Government, all his rights and privileges as a citizen of this nation shall cease: *Provided, nevertheless*, That the national council shall have power to readmit by law to all the rights of citizenship any such persons who may at any time desire to return to the nation, on memorializing the national council for such admission. (Laws of the Osage, 1895, p. 51.)

Now, that was the constitution and the law that was voted upon and held to be a governing principle in the Osage Nation. Still Mr. Miles, one of the attorneys for the applicants and at the time of the adoption of the Osage constitution was their agent, stated in reply to a question of Senator Paynter (p. 29 of Hearing) that there was no such law.

Senator SUTHERLAND. Did these thirty-seven cases come within the provision that you have read?

Mr. MERILLAT. The bulk of the thirty-seven cases came within it. For example, the Stratton family, which is quite large, were denied admission on the ground that they never had been born to citizenship; that their parents, assuming that they had Osage blood at all, and that was seriously questioned, but assuming that they had Osage blood, their parents, and as to the younger applicants their grandparents through whom they claim had gone outside of the nation, married a white person and had become incorporated into the American body politic, prior to the birth of the applicants and that those

children were not Osages at all; whatever rights any of them ever had or desired, they had long since parted with at the time when the Osage people, as the treaty shows, were in an impoverished condition and it was not a thing of value to be an Osage. That is true also of the Revards, Crumps, Hunts, Lovelands, McCrarys, and others of more than 25 of the 37.

It was held in several Cherokee cases—which we will put in the record—that if any person were born out of the Cherokee Nation of parents who had left the Cherokee Nation, that those persons had no Cherokee rights. The only way they could get them was by memorializing the council and being readmitted. Now, the Osage council, as a matter of fact—some time back, before their property was about to be distributed, before the time when to be an Osage meant from $15,000 to $20,000 a head—the Osage council at various times upon the application of persons who showed that they were of Osage blood, admitted various persons. Some of those admissions it is alleged were procured by fraud and bribery, but the Osage council having admitted them, they were bound by that just the same as in the Cherokee Nation it was held the Nation was bound in a prima facie way and had the burden of clearly proving the fraud.

When the Osages originally acquired their present reservation they acquired it with money of their own. They bought the land from the Cherokees; consequently it certainly must be held that they bought whatever title the Cherokees had, and that title was a title as tenants in common in fee simple as long as they should exist as a nation. It was provided in the deed, "to have and to hold the said premises, being the lands of the Osage Nation, bought as stated, or as above sold, with the appurtenances unto the said party of the second part for the uses and purposes aforesaid." In an Indian deed it is not necessary to use the word heirs to create a fee simple and the allotting act admits they are not extinct, so there was no reversion to the United States.

(The deed is as follows:)

DEED FROM THE CHEROKEE NATION, THROUGH ITS DELEGATES, TO THE UNITED STATES IN TRUST FOR THE USE AND BENEFIT OF THE OSAGE AND KANSAS INDIANS.

This indenture, made and entered into this fourteenth day of June, A. D. eighteen hundred and eighty-three, between the Cherokee Nation, by Dennis W. Bushyhead, principal chief, Richard M. Wolfe, and Robert B. Ross, delegates of said Cherokee Nation, for and in behalf of said nation. of the first part, and the United States of America, in trust for the use and benefit of the Osage and Kansas Indians, of the second part, witnesseth that—

Whereas by the sixteenth article of the treaty concluded July nineteenth, A. D. eighteen hundred and sixty-six, between said Cherokee Nation and the United States, the said United States acquired the right "to settle friendly Indians on any part of the Cherokee country west of the ninety-sixth degree" of west longitude, under certain limitations therein mentioned; and

Whereas under authority of an act of Congress approved June fifth, A. D. eighteen hundred and seventy-two, a certain tract of said country was set apart for the Great and Little Osage tribe of Indians, with a proviso that said Great and Little Osage tribe shall permit the settlement within the limits of said tract of the Kansas tribes of Indians; and

Whereas by virtue of a provision in the act of Congress of March third, eighteen hundred and seventy-three, there has been transferred from the proceeds of sale of Osage lands in Kansas, and placed to the credit of said Cherokee Nation, the sum of one million ninety-nine thousand one hundred and thirty-seven and forty-one one-hundredths dollars ($1,099,137.41) in payment for said tract of land; and

Whereas by an act of Congress approved March third, A. D. eighteen hundred and eighty-three, three hundred thousand dollars ($300,000) was appropriated "to be paid into the treasury of the Cherokee Nation out of funds due under appraisement for Cherokee lands west of the Arkansas River:" *Provided*, "That the Cherokee Nation, through its proper authorities, shall execute conveyances satisfactory to the Secretary of the Interior to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Perces, Otoes, and Missourias and Osages now occupying said tract as they respectively occupy the same before the payment of said sum of money;" now

Therefore, by authority of an act of the national council of the Cherokee Nation aforesaid, approved May eighth, eighteen hundred and eighty-three, which recites: "That Dennis W. Bushyhead, principal chief, Richard M. Wolfe, and Robert B. Ross, delegates of the Cherokee Nation, are hereby authorized and empowered, in the name of the Cherokee Nation, to execute deeds of conveyance as required by said act, March third, eighteen hundred and eighty-three, for the tracts of Cherokee land for the benefit of the Pawnees, Poncas, Nez Perces, Otoes, and Missourias and Osages, as they respectively occupy the same, said party of the first part, by the aforesaid principal chief and delegates, and in consideration of the payment of the sum of money mentioned in the act of March third, eighteen hundred and eighty-three, aforesaid, as due under appraisement for Cherokee lands west of the Arkansas River, and of the further sum paid under the act of March third, eighteen hundred and seventy-three, as aforesaid, does by these presents bargain, sell, remise, release, relinquish, and confirm unto the said party of the second part, forever, in trust nevertheless and for the use and benefit of the said Osage and Kansas Indians, all those certain tracts of land lying and being in the Indian Territory, embracing the following townships and fractional townships north and east of the Indian meridian—the fractional townships north and east of the Indian meridian—the fractional townships being on the left bank of the Arkansas river:

"Fractional township twenty-four (24), twenty-five (25), and twenty-six (26), range two (2) east; fractional townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), range three (3) east; fractional townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), and twenty-seven (27), township twenty-eight (28), and fractional township twenty-nine (29), range four (4) east; fractional townships twenty-three (23) and twenty-four (24), townships twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range five (5) east; fractional townships twenty-two (22) and twenty-three (23), townships twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range six (6) east; fractional townships twenty-one (21) and twenty-two (22), townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range seven (7) east; fractional townships twenty-one (21) and twenty-two (22), townships twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range eight (8) east; fractional townships twenty (20) and twenty-one (21), townships twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range nine (9) east; fractional township twenty (20), townships twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range ten (10) east; fractional township twenty (20), townships twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and fractional township twenty-nine (29), range eleven (11) east; fractional townships twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), and twenty-nine (29), range twelve (12) east; according to a plat of lands annexed hereto, marked 'A,' and made a part of this conveyance; containing in all one million five hundred and seventy thousand one hundred and ninety six and thirty-hundredths acres (1,570,196.30) hereby granted. Under the act aforesaid there has been set apart for the Kansas Indians, as provided by said act, the following numbered townships and fractional townships, being a part of the lands above described and indicated upon the before-mentioned plat:

"Fractional townships twenty-seven (27), twenty-eight (28), and twenty-nine (29), range three (3) east; fractional township twenty-seven (27), township twenty-eight (28), and fractional township twenty-nine (29), range four (4) east; the west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and thirty-two (32), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), of township

twenty-seven (27) north, range five (5) east; the west half of sections three (3), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34), and sections four (4), five (5), six (6), seven (7), eight (8), nine (9), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31) thirty-two (32), and thirty-three (33), of township twenty-eight (28) north, range five (5) east; the west half of sections fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34), and sections sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33), of township twenty-nine (29) north, range five (5) east; containing an area of one hundred thousand one hundred and thirty-seven and thirty-two hundredths acres (100,137.32), which aforesaid lands were paid for by the Osages to the Cherokees, and the Kansas Indians have paid for that portion assigned to them by proper transfer of the funds arising from the sale of their lands in Kansas; together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands hereby granted.

"To have and to hold the said premises as above described with the appurtenances unto the said party of the second part for the use and purposes aforesaid.

"In witness whereof the party of the first part hath subscribed this conveyance by the said principal chief and delegates aforesaid, who have also hereunto set their hands and seals this fourteenth day of June, A. D. eighteen hundred and eighty-three.

"[CHEROKEE SEAL.] THE CHEROKEE NATION,
By DENNIS W. BUSHYHEAD, [L. S.]
Principal Chief.
RICHARD M. WOLFE, [L. S.]
ROBERT B. ROSS, [L. S.]
Delegates of the said Cherokee Nation.

"Signed, sealed, and delivered in the presence of Jos. K. McCammon, N. P. Loveridge, Wm. A. Phillips."

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this fourteenth day of June, A. D. eighteen hundred and eighty-three, before me, a notary public in and for the district aforesaid, personally came Dennis W. Bushyhead, Richard M. Wolfe, and Robert B. Ross, to me known to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed, for the purposes and under the authority therein mentioned.

[SEAL.] GEO. M. LOCKWOOD,
Notary Public.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., March 16, 1892.

I, T. J. Morgan, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal copy of a deed dated June 14, 1883, from the Cherokee Nation, through its delegates, to the United States, in trust for the use and benefit of the Osage and Kansas Indians, conveying the tract of country in Indian Territory known as the Osage Reservation and the Kansas Reservation, as the same appears on record in this office.

T. J. MORGAN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 21, 1892.

I, John W. Noble, Secretary for the Department of the Interior of the United States of America, do hereby certify that T. J. Morgan, whose name appears signed to the foregoing certificate, is now, and was at the time of signing the same, Commissioner of Indian Affairs, and that full faith and credit are due to his official acts as such.

In testimony whereof I have hereunto set my hand and have caused the seal of the Department to be affixed on the day and year above written.

[SEAL.] JOHN W. NOBLE,
Secretary.

(See Laws of the Osage, 1895, p. 45.)

The Supreme Court has recently said that as to Indian land it is not necessary to say "in fee simple in common;" that that is the effect of such language as is used here. So I say that following the title that exists and, it being conceded that neither the Cherokees nor the Osages have become extinct, that they have a title in fee simple under the decisions and their treaty or statute patents.

Now, in the case of the Eastern Band of Cherokees *v.* The United States (117 U. S.), the Supreme Court says:

If Indians wish to enjoy the benefits of the common property of the Cherokee Nation, in whatever form it may exist, they must, as held by the Court of Claims, comply with the constitution and laws of the Cherokee Nation and be readmitted to citizenship as there provided. They can not live out of its territory, evade the obligations and burdens of citizenship, and at the same time enjoy the benefits of the funds and common property of the nation. Those funds and that property were dedicated by the constitution of the Cherokees, and were intended by the treaties with the United States, for the benefit of the united nation and not in any respect for those who had separated from it and become aliens to their nation.

Senator SUTHERLAND. What case is that?

Mr. MERILLAT. That is the decision of Justice Field of the Supreme Court, acquiesced in by that tribunal, which consisted of Bradley, Miller, Waite, and Harlan of the present bench, and also Blatchford. It is the case of the Eastern Band of Cherokees *v.* The United States (117 U. S.).

Mr. HEMPHILL. They are the North Carolina Cherokees, are they not?

Mr. MERILLAT. It is the Eastern Band of Cherokees. They claimed that it was not necessary for them to remove; that they were Cherokees by blood and being Cherokees by blood they had a right to share in these lands and funds, and ultimately they were given the right to go to the court and test the question as to whether or not they did have a right by reason of their blood and birth, and it was held not.

Mr. BELT. There is a provision in the treaty of 1835 that permitted them to remain East and become citizens of the United States.

Mr. MERILLAT. Just the same, for example, as the Strattons. The Eastern Band of Cherokees lived in North Carolina, and their parents before them, and they had voted there.

Now, in the case of Roff *v.* Burney, in 168 United States, 122, the Supreme Court said:

Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature could confer it could withdraw. The only restriction on the power of the Chickasaw Nation to legislate in respect to its internal affairs is that such legislation shall not conflict with the Constitution or laws of the United States, and we know of no provision of such Constitution or laws which would be set at naught by the action of a political community like this in withdrawing privileges of membership in the community once conferred.

That is a decision by the Supreme Court.

Assistant Attorney-General Vandeventer, in a decision rendered January 22, 1908, says:

Under the general rule governing in the matter of community property, one who withdraws from the community or association thereby forfeits all his interest in the community property, and Banks suffered this unless protected by some act of Congress.

Mr. Vandeventer found that Banks was a Sac and Fox Indian of Missouri, who lived across the river from the tribe. He found that Banks was protected by the acts of March 3, 1875, and of February,

1887. He held that Banks was protected for the reason that the Sac and Fox Indians did not hold their title as did the Osages and others who are excepted from the provisions of the act of February, 1887.

He found that Banks had been, prior to the time of his separation from the tribe, a member of the tribe.

With reference to the children of Banks he held that a different question was presented. Their father had severed his tribal relations before their birth, and hence they could not claim to have been born members of this tribe. Neither, said he, is it claimed that any one of them was ever considered or recognized as having membership therein. It was, therefore, held by him that they were not entitled to allotments. This decision of the Assistant Attorney-General squarely, therefore, denies the very principle involved in the applications of the Strattons, Lovelands, Hunts, McCrarys, Rosa Warr, Peter Revard, and Crumps. Also the Auld applications.

The attorneys for the applicants attempt to get around this existing condition by saying that the general allotment act of 1887 protected these persons, and that they did not, as a matter of fact, have to affiliate with, or have been affiliated into the tribe if at some time in the distant past they had had a quantum of Osage blood. But the legislation passed by Congress shows that originally, when section eight was adopted, it was provided that only the Senecas and the Five Civilized Tribes should be excepted from the provisions of that act. As to the Five Civilized Tribes the exception was made from the provision that by withdrawing from the tribe a person did not forfeit his tribal rights, because the Five Tribes had a certain patent or treaty title, namely, that they held this land in common as communal land. This was stated on the floor of the Senate. Senator Teller, as the Congressional Record shows, thereupon rose and in substance stated that he desired to make a sixth civilized tribe; that the Osages had progressed to a considerable extent and he desired to add them as a sixth tribe. The Seneca Nation had previously been named. Thereupon it was decided to add certain other tribes in the Indian Territory, namely, the Miamis, the Peorias, and I believe, one or two others.

Senator CURTIS. The Sac and Fox.

Mr. MERILLAT. And the legislation was passed in that manner. Now, Senator Dawes was at that time the chairman of the Indian Committee. He was a man who had devoted his life to the study of Indian affairs and, as you know, was chairman of the commission that ultimately brought about the dissolution of the Five Civilized Tribes and the final incorporation of the Indian Territory into the Union with Oklahoma. He said that the Osages "have adopted a written constitution and government after the manner and similitude of ours;" they had a title like the Five Civilized Tribes, not such a title as was in the tribes in general. Now, the debate on the amendment that was adopted shows clearly, as does that language, that the purpose and intent of Congress at the time the legislation was enacted was to put the Osages upon the same plane as the Five Civilized Tribes; to recognize that their title was different from Indian titles generally; that their land was communal property and that the Osages had a right of determination as to who should share in that, just as the Five Civilized Tribes had. Congress made agreements with the Five Civi-

lized Tribes, and it made in substance, an agreement with the Osage Nation; it asked them to draft the bill that was finally enacted.

I would like to insert in my statement extracts from the Congressional Record, both of the proceedings of the House and the Senate, showing both here and there that section eight was inserted for the special purpose, as we claim, and as it shows upon its face, of excepting from its provision any Indian claiming to be a member of the Five Civilized Tribes or the Osages, and to apply to those persons the doctrine that if you leave those tribes you take the chances of losing the land—rights which they would lose under the constitution and laws of the tribe in question.

(The extracts referred to are as follows:)

The Senate having under consideration Senate bill No. 54, to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes, on May 17, 1886—

Mr. TELLER. I move to strike out in line 2 of section 9 (8) the word "and" between words "Chickasaw" and "Seminoles," and after the word "Seminoles" to insert "Osages," so as to make the section read: "That the provisions of this act shall not extend to the reservations of the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osages in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York."

Mr. DAWES. I have no objection to that.

Mr. TELLER. I just want to say one word. The Osage Indians are a very sturdy race and have recently taken a very advanced step in the cause of education by providing for the compulsory education of their children of school age. They made application to the Interior Department about a year and a half ago, to be known hereafter as the "Sixth Civilized Tribe," and their ambition is to be so known and to be civilized. I should like to have them inserted with those tribes that we recognize as "civilized tribes."

Mr. DAWES. They have adopted a written constitution and a government after the manner and similitude of ours. How nearly it approaches to ours I suppose it is difficult to tell, but they are evidently as far advanced in all the stages of civilization as the other five tribes, and I think it commendable that they should seek to be put on the same footing.

* * * * * * *

I have no doubt that if the bill should be applied to what are called the "Five Civilized Tribes of Indians," it would be the best thing possible in its application to them. I think that the five tribes have arrived at a standstill, and that that standstill grows out of the character of their title, and that character of title is precisely the same as to the Osages. They hold in common.

The reason why this bill does not apply to the Five Civilized Tribes—and that is the same reason why it should not apply to the Osages—is that they hold absolute patent to their lands in common, so that they can not be subdivided into severalty holdings, and I think that one of the most serious misfortunes attending the effort to cause the Indian to cease to be an Indian. It has been, up to a certain stage, a help in the advancement of these Indians, but in my opinion it has now reached its limits, and hereafter, as they continue to hold in common, it is difficult for me to see how much progress beyond that will be made.

Certain tribes hold what may be called a "treaty title" and certain other tribes a "statute title," and many occupy lands simply under an Executive order. The application of this bill is to those who hold under treaty and statute title, and provides for their consent. Then a certain part of the bill authorizes the Secretary of the Interior to take Indians on reservations held by Executive order just as fast and as far as they are sufficiently advanced and put them upon such land with a holding in severalty.

There is no way to apply this bill to the Five Civilized Tribes or the Osages, because they hold a fee and the present condition of public sentiment in those nations is such that I do not think it would be well to agitate that question just at this moment, and that is the reason why the exception is made. It is not from the fact that we are treating the poor Indians outside these reservations in one way and in a better and more favored way, but it is because we can not quite reach them now as they are situated that the bill excepts them. I trust the time is not far distant when the hold-

ing in severalty will prevail all over this country among the Indians as well as white men. (Cong. Rec., vol. 17, pt. 2, 49th Cong., 1st sess., pp. 1558, 1559.)

When Senate bill No. 54 was under consideration in the House the following amendment, proposed by the Committee on Indian Affairs, to sections 8 and 9 was read:

After the word "Osages," in the third line of section last read, amend by inserting "the Miamis and Peorias and Sacs and Foxes."

Mr. SPRINGER. I move to strike out this section. I desire to make a statement in regard to the operation of this bill upon the tribes excepted by the pending section. I think that the tribes occupying the Indian Territory—that is to say, the tribes mentioned in this section and those included in the amendment just read—should not be excepted from the provisions of this bill, but should be included in it. There are in that Territory 75,000 Indians, I believe.

* * * * * * *

I see no reason why the provisions for the holding of lands in severalty should not be applied to these Indian tribes. In fact, the tribes in question are in a better condition for receiving their lands in severalty than are any other tribes in the United States. They are now ripe for this reform. I suggest, therefore, to the gentleman in charge of this bill, that in the interest of the Indians themselves, this whole section be struck out, and the provisions of the bill made to apply to the Indian nations occupying the Indian Territory, so that these Indians who are better prepared for the proposed change than any other Indians may be permitted to avail themselves of the provisions of the bill. For these reasons I have moved to strike out the whole section.

Mr. SKINNER. I have not time to answer fully all that the gentleman from Illinois [Mr. Springer] has said because the hour for the consideration of this matter has nearly expired. I can only say that the lands of the Indians in the Indian Territory and of the Seneca Indians in New York are held by different title from the lands of other Indians in this country. I quote from a letter written to the Committee by the Commissioner of Indian Affairs:

"The exemption of the Seneca Reservation is right and proper because the United States has no title or interest of any kind in the lands of said reservation, which, when the original title is extinguished, will become vested in fee in the Ogden Land Company or its successors."

Let us have a vote first on the amendment of the committee.

The amendment was agreed to.

Mr. SPRINGER. I will modify my motion so as to strike out Creeks, Choctaws, Chickasaws, Cherokees, and Seminoles, and leave in Osages. These are the Five Civilized Tribes.

Mr. THROCKMORTON. Mr. Chairman, I do not wish unnecessarily to detain the committee, but I do want to say emphatically that no greater outrage could be put upon any people than to include the Five Civilized Tribes in this bill.

Several MEMBERS. We will vote it down.

Mr. THROCKMORTON. It would be a gross outrage if it were permitted to be done.

Mr. Springer's amendment was disagreed to. (Cong. Rec. vol. 18, pt. 1, 49th Cong., 2d sess., p. 226.)

Now, following up that same line of argument, this very question came up before the Assistant Attorney-General in the Mary L. Strickland case, in which he construed what would be the effect of the Cherokee laws and constitution on citizenship rights of a person of unquestionable Cherokee blood leaving that community and going elsewhere, and he held that "while Mary L. Strickland was a Cherokee by blood, still, as she did not remove to and remain in the nation, she forfeited her right to enrollment."

We ask that this opinion be inserted in the record.

The opinion and the accompanying correspondence are as follows:

MAY 17, 1905.

By Judge Campbell. Review. Mary L. Strickland, applicant for enrollment of herself and three minor children as citizens by blood of Cherokee Nation. (See opinions of March 12 and December 28, 1904.)

Held, That while Mary L. Strickland was a Cherokee by blood, still, as she did not remove to and remain in the nation, she forfeited her right to enrollment. Motion denied.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, May 17, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received by reference of April 5, 1905, with request for my opinion, the record in the case of Mary L. Strickland, applicant for enrollment of herself and three minor children as citizens by blood of the Cherokee Nation. The case was subject of my opinions of March 12 and December 28, 1904, adverse to the right of all the applicants, in the first of which the facts were fully set out and to which reference is here made. Mrs. Strickland and her eldest child were admitted by the Commission to the Five Civilized Tribes September 1, 1896, which, October 22, 1898, under the act of June 28, 1898 (30 Stat., 495, 504), denied their enrollment because they had not before that act "removed to and in good faith settled in the nation." March 17, 1904, the Department denied their enrollment. February 4, 1905, Mrs. Strickland filed six additional papers as evidence, and asked review of the decisions of March 17, 1904, and the matter is now before me for opinion as thus presented.

The first of these additional papers is a copy of proceedings of the Cherokee Citizenship Commission of May 16, 1887, readmitting to citizenship, among other persons, Mary L. Rogers (now Strickland), the principal applicant, as Cherokee citizens by blood, descended from William Rogers and Mary V. McCair, appearing on the census roll of 1835.

Accepting this as full and sufficient to show her Cherokee blood and due readmission in 1887, it is insufficient to show present right to enrollment, unless she within the six months allowed by the Cherokee act of December 4, 1894, applicable to persons theretofore readmitted, removed to and permanently located within the limits of the nation. The validity and effect of this act is settled by so many decisions as to require here no further discussion. There is no act of Congress annulling it, and the Indian nations are self-governing communities having full power, subject to control of Congress, to regulate their own affairs, one of which is to declare how citizenship may be acquired and how it shall be forfeited and lost. She was for a brief time, the duration of which is not shown by the record, in the nation in 1895 and purchased her farm there, September 20, 1895, as shown by the deed—one of her six papers now filed. She was in the nation during August, September, and October, 1896, and again "for a short time" in 1899 and in 1900 for "about a month." She bought the land for a home for herself and children, and says: "I regard it as our home." But the fact is undisputed that ever since her marriage, June 17, 1891, except for these brief periods, she has resided in Georgia with her husband, a citizen of Georgia, in which State she was born and has always lived, with no present intent at any definite time to remove her domicile and has not removed it. The mere purchase of land in the nation in expectation at some definite future time to occupy it as a home, without ever having effectuated the intent, was not a removal to and a permanent location in the nation. This alone is decisive of the case.

The admission by the Commission in 1896, though not appealed from by the nation, was not final, so that it was beyond the power of Congress to require the Commission to deny her enrollment for failure to remove to the nation before June 28, 1898, as it did do by the act of that date, above mentioned.

As Mrs. Strickland never became a Cherokee citizen, the principles that controlled the case of Joseph D. Yeargain, cited by her, are inapplicable here, for reasons shown in my former opinion of March 12, 1904, which need not be repeated. In the case of Josie or Jessie Hall, referred to by Mrs. Strickland, the facts were, as shown by the record in that case, that she and her mother were admitted to Cherokee citizenship in 1887 and removed to the nation and permanently located at Vinita, in the nation, in 1890, before the Cherokee act of December 4, 1894. She and her mother selected and improved lands on Cabin Creek, in the nation, which they still hold. She has been traveling as a member of a theatrical troupe, and absent from the Territory most of the time, but the evidence showed that "she has owned a home place in the Cherokee Nation all the time she has been away or, rather, has had an interest." The difference between these cases that Mrs. Strickland relies upon and her own, wherein there was no removal to the nation and no citizenship acquired, is obvious.

No reason appears from the new evidence or otherwise to recall my former opinion, and I adhere thereto and am of opinion that her application was properly denied.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved May 17, 1905.
E. A. HITCHCOCK, *Secretary.*

Now, to show the distinctions that were made and to show the reasons why some people are upon the roll and some others are not, I will read the decision which the Assistant Attorney-General delivered, or the substance of it, in the Nancy Gunter case. That was a Cherokee enrollment case. It was held that Nancy Gunter had been born a Cherokee; that she did not forfeit her rights because there had not been a concurrence of removal of her person and effects from the nation; that she had been born in it, and that while she may have at some time gone out that she always possessed property and always continued her citizenship there.

I ask that that be inserted in the record.

(The decision and accompanying correspondence are as follows:)

JUNE 21, 1907.

By Judge Campbell. Nancy Gunter, Cherokee enrollment review.

Held, Cherokee by blood, admitted to Cherokee citizenship by duly constituted Cherokee tribunal, an actual resident, always possessed property, no concurrence of removal of person and effects from nation—ordered that she be enrolled.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, June 21, 1904.

The SECRETARY OF THE INTERIOR.

SIR: I am in receipt, by reference of June 13, 1904, of the record in the application of Nancy Gunter for her enrollment as a Cherokee citizen by blood, with departmental decision of February 26, 1904, denying her enrollment, and a motion for review thereof, with request for my opinion whether such motion should be granted and the applicant be enrolled as a Cherokee by blood.

The applicant is a Cherokee by blood and removed to the nation with the Old Settler Cherokees in 1835. How or when she lost her rights of citizenship does not appear in the record. January 14, 1880, she was readmitted to citizenship by the citizenship commission of the Cherokee Nation and exhibited the certificate to the Commission to the Five Civilized Tribes. The evidence in the record shows that at the time of her readmission she was a resident of the Cherokee Nation, and has always since that time had effects in the nation. In the fall of 1880 she acquired a farm and improvements in the nation, which she disposed of in 1882, but immediately acquired another in the Delaware district, which she has ever since held and upon which she has kept a bunch of horses and herd of cattle. The extent, value, and character of her improvements, the number of horses and cattle, and the length of time that she maintained actual residence in the nation do not appear. A question framed to show the last-mentioned fact was withdrawn by her counsel upon objection of counsel for the nation that it was irrelevant and immaterial. It appears to have been conceded that her residence in the nation January 14, 1880, was in good faith, and was so maintained for some time afterwards. At some time in 1880 she removed to the State of Arkansas, and has ever since resided there, and now lives at Siloam Springs, Ark., about 3 miles outside the Cherokee Nation, retaining in the nation her farm and stock. Her name is borne on the 1896 census roll.

It thus appears that the applicant is a Cherokee by blood, was admitted to Cherokee citizenship by the duly constituted Cherokee tribunal, was then an actual resident, and then, and ever since, possessed property and effects there, which she at no time has removed therefrom. At no time was there a concurrence of a removal of the person and the effects beyond the limits of the nation—conditions fixed by the Cherokee constitution as necessary to expatriation and loss of citizenship rights.

I am therefore of opinion that the applicant had not lost her right and that the review should be granted, and that she should be enrolled.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved June 21, 1904.
E. A. HITCHCOCK, *Secretary.*

The Assistant Attorney-General followed that up with the opinion in the case of John L. Le Flore and minor children for enrollment as citizens by blood of Choctaw Nation. Le Flore removed from the nation with his effects, and has since continuously resided in Mississippi and has no intention to return unless enrolled.

Now that is precisely the case here. The Strattons and nearly all the others say: "Unless you give us this $15,000 or $20,000 per head we have no intention of leaving California, where we have lived for thirty or forty years, and become an Osage. We will become an Osage and claim our blood rights if you will give us a share in this large communal estate for doing so."

Assistant Attorney-General in the Le Flore case holds as follows:

MARCH 24, 1905.

By Judge Campbell. John L. Le Flore and minor children for enrollment as citizens by blood of Choctaw Nation. Le Flore removed from the nation with his effects and has since continuously resided in Mississippi and has no intention to return unless enrolled.

Held, That as Le Flore has resided in Mississippi over a quarter of a century, is a permanent resident there, without intention to reunite himself with the Choctaw Nation unless offered the inducement of an allotment, he is not entitled to be enrolled.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 24, 1905.

The SECRETARY OF THE INTERIOR.

SIR: I received, by reference of July 2, 1904, the record of the Commission to the Five Civilized Tribes in the application of John L. Le Flore for enrollment of himself and two minor children, John and Charles Le Flore, as citizens by blood of the Choctaw Nation, with request for my opinion thereon.

August 27, 1902, Le Flore was heard before the Commission, and February 25, 1903, his right was denied because he was not, June 28, 1898, a resident in good faith of the Indian Territory. June 11, 1903, the Indian Office, transmitting the record, recommended that the Commission be directed to allow the application conditioned upon the applicant's removal to the Territory and establishing residence there in good faith prior to final approval of the rolls.

The record shows John L. is son of William Le Flore, a recognized member of the Choctaw Nation, of one-fourth Choctaw blood, one of the original treaty emigrants from Mississippi, or founders of the Choctaw Nation as now constituted and located. John's mother was one-eighth Creek blood. The family lived in the Choctaw country four years, when the family returned to Mississippi, where William died. The mother and children returned to the Choctaw Nation about 1858, where John L. held and worked improved land and engaged in stockraising. He there married Cordelia Harkins, a member of the Choctaw Nation, and continued to reside therein until about 1878, when he sold his improvements on land in the nation and went to Mississippi with his child to place her among his relatives there for education and nurture. He intended to return to the Choctaw Nation, but could not satisfactorily sell his Mississippi property, and remained there about twenty years, making, however, several trips to the Territory, the last of which was about 1895 or 1896. He participated in the payment of leased district money in 1893, and is identified on the Choctaw census roll of 1896. April 14, 1898, in Carroll County, Miss., he married his present wife, Alma Marshall, a white woman, and of her were born his children, John and Charles Stanford, in 1899 and 1901, respectively. He testified that his residence was at Valley Hill, Miss., and that he intends to remove to the Territory if enrolled.

There is thus presented the claim to enrollment of one born to Choctaw citizenship, who removed from the nation about 1878 with all his effects, and who has continuously since resided in Mississippi, and has no present intention of returning to the nation unless enrolled.

The case is substantially in all respects like that of Sidney J. Cundiff *v.* Choctaw Nation, decided by the United States court, central district, Indian Territory, on appeal from the Dawes Commission, wherein Cundiff, a Choctaw citizen, removed from

the nation to Texas January 1, 1887, and thereafter resided there. Referring to the treaty of 1830 (7 Stat., 333), the court held that—

"By the second article of that treaty, granting the lands now held by the Choctaw Nation to them, as well as by the terms of the patent afterwards executed by the United States, two conditions subsequent were attached to the grant; one, that the Choctaw people shall thereafter continue to exist as a nation, and the other, that they shall live upon the land.

* * * * * * *

"But there is another condition to the grant, set out in the second article of the treaty of 1830 and of the patent. It is that these grantees, these tenants in common, shall not only live on the land, but they shall exist as a nation, or their title shall be forfeited. Now, each one of these tenants in common possesses all of the rights, and is entitled to all of the privileges, and is required to perform all of the duties relating to the land that each of the others is entitled to and must perform; and, therefore, if none shall be allowed to abandon the land, or cease to live on it, each and all of the others may do the same thing, and if they should exercise the same right, and move off of the land and out of the nation, what would become of its existence? The individual Choctaw who moves away from his people, abandons their lands and separates himself from the sphere of their political organization as a nation, is not performing his part of the condition that these people shall 'exist as a nation.' He is also violating the very object of the treaty, and the policy of the Federal Government as well as of his own.

"In my opinion, as long as he remains away from the nation and the lands, under these circumstances, he forfeits his right to that citizenship which he has abandoned, and which carries with it the right to the land; that the Choctaw Nation, in the exercise of its sovereign power, has the right to refuse to place him on its rolls of citizenship.

* * * * * * *

"The court is, therefore, of the opinion that the claimant in this case is not entitled to enrollment, and the action of the Dawes Commission is affirmed, and judgment for the Choctaw Nation."

The reasoning of the court is persuasive and commends itself to my judgment as a proper rule applicable to such cases. Le Flore has resided in Mississippi over a quarter of a century and is a permanent resident there, without intention to reunite himself with the Choctaw Nation unless offered the inducement of a prospective allotment.

I am therefore of opinion that he is not entitled to be enrolled, and that the decision of the Commission should be affirmed.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved March 24, 1905.
E. A. HITCHCOCK, *Secretary.*

When we come to the Osages, construing a similar provision, construing a title that is substantially the same, the Secretary of the Interior adhered to and followed the line of judicial decisions in his office. One other case will illustrate the point and the distinctions that have been observed, and it is a case that I can speak of, because we were in the case. A man named Davis, who was living in Georgia, but of Cherokee blood, came to the Cherokee Nation along about 1890, or thereabouts, intending to affiliate himself with the nation. He had not been born in it. The Cherokee Nation admitted him to citizenship, just the same as the Osages have admitted the father of the applicant, Revard, who came there about 1889. They admitted Davis to citizenship, and when they came there they remained a short time. Davis and his children—some of them, at any rate—were born in the Cherokee Nation and the others were admitted by the act of the nation, so that they became citizens of the Cherokee Nation by removal to the nation and by the assent of the nation through its tribal officers. Davis, however, before 1896, at the request of his wife, who wanted to go back to her Georgia mountains, removed with himself and his children. The matter was put into our hands, and we declined to take any save one case, and that was

the case of a minor who had not yet reached his majority and had no right of election, the other children being of age. Now, as to him, following established legal principles, we held that the minor had acquired legal rights; that no act of the father in removing the child and leaving with him and going outside of the nation could take away from that minor child the rights which the minor child had; that that minor child had become a Cherokee and till of age could not lose its rights, and the Attorney-General and the Secretary of the Interior, over the protest of the Dawes Commission, found that we were right. They held that as to those who had reached their majority and had removed outside of the nation under the laws and constitution of the Cherokee Nation they had forfeitured their rights and had renounced them, but so far as concerned this minor he had not, because he had once been a citizen of the nation, and having been a citizen of the nation and not yet being of age, that he could not, as a minor, bar himself from rights. and admitted him to citizenship.

Mr. HEMPHILL. What case is that?

Mr. MERILLAT. That was the case of Lorenzo Newton Davis. We represented Lorenzo Newton Davis, and Davis was found entitled to enrollment, and the roll was sent down to the Dawes Commission to make up. They by letter and by telegram protested against it as conflicting with the Strickland and all their decisions, but the Assistant Attorney-General held to the clear distinction. The roll for some reason did not get up here by the 4th of March, 1907, and so the physical act of putting the Secretary's name on it was not completed. We brought that matter up, and the Department held that as there had been an ultimate and final decision, after litigation, to put the name on the roll, they would treat that as an enrollment, and Lorenzo Newton Davis has his rights in the Cherokee Nation.

Now, furthermore, with respect to the right of a person who has expatriated himself and ceases to have the rights of citizenship, the United States has upon its statute books acts in exact accordance with what we claim. In the act of February 10, 1855 (10 Stats., 604), it is provided that the right of citizenship shall not descend to persons whose fathers never resided in the United States. The Attorney-General (14 Opinions Attorney-General, 295) held:

> The declaration in the act of July 27, 1868, that the right of expatriation is "a natural and inherent right of all people" comprehends our own citizens as well as those of other countries, and where a citizen of the United States emigrates to a foreign country and there, in the mode provided by its laws, formally renounces his American citizenship with a view to become a citizen or subject of such country, this should be regarded by our Government as an act of expatriation.

Now, with respect to the Strattons and the other persons whose fathers never resided in the Osage Nation and never became entitled to any rights therein, and whose forbears, if they were Osages, expatriated themselves when the Osages were poor, are you going to admit them to a share in the distribution of this communal estate solely because some time long back they had a strain of Osage blood? If so, why deny the right of any number of persons, other than the applicants, who have Osage blood? The other side realizes the weakness of their position and what it may lead to and therefore want to limit enrollments to these alleged pending cases. I ask the committee this question: Is it fair that persons should get rights because their attorneys happened to be in Washington at the time

this Osage allotment bill was pending and at the time that Congress put in an amendment showing that there should be considered the cases of all persons whose applications were pending at the date of the final passage of this act, amending it and making it different from the way in which it previously read, namely, that there shall be considered the cases of all persons whose applications were pending at the date of the introduction of the bill? Because these attorneys whose cases had been decided adversely long ago, and with no right under any principle of jurisprudence that I know of to reopen them, knowing that that amendment had been made on June 5 or 6, 1906, as the date shows, between then and the date the act went to passage went down to the Interior Department and wrote a motion for review, asserting that the previous decisions of a year or more before were wrong and should be reversed for errors of law and errors of fact—no specification of wherein they were wrong.

I say that is the most technical rule that you can possibly make. You propose to bar every other person who has Osage blood because that person did not rush in and take advantage of some amendment which he knew was being made and which perhaps those filing new motions had been the inducing cause of. I take it that that would not be fair. It is stated that those thirty-seven persons were the only persons in that category. I challenge that statement on the authority of the officers of the Interior Department and desire to put in evidence the decision by them on some eighty-nine cases that were pending, and I desire to prove likewise some one hundred and forty-odd cases in just this situation; so that when they tell you that those thirty-seven cases are all the pending applications they are making a mistake.

Mr. LEAHEY. I made that statement from the records of the Department.

Mr. MERILLAT. The records of the Department show that that is not correct. The following will prove it:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 12, 1907.

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit herewith for your consideration letters dated January 31, February 9 and 18, and March 8, 1907, respectively, from the United States Indian agent of the Osage Agency, reporting on the applications of 89 persons for enrollment as members of the Osage tribe of Indians. Their cases are discussed as follows:

Mrs. Mino C. Allen (nee McGarry) for enrollment of herself, her mother, Mrs. Amanda M. McGarry, and her nephew, Carl F. Wood.

The applicant, although given ample opportunity, failed to submit any evidence in her case other than an affidavit dated June 28, 1906, in which she said in effect that she is 31 years of age and is the daughter of Mrs. Amanda M. McGarry, who is an Osage Indian by blood; that she (applicant) was legally married to Harry L. Allen on June 29, 1894, at Wichita, Kans., and now resides with her mother at Wagoner, Ind. T., and that she would submit affidavits from divers persons to support her allegations.

As the applicant failed to prove Osage blood and it is shown that neither she nor her mother has ever affiliated with or been identified by the Osage tribe as belonging thereto, she is clearly not entitled to admission as a member. I therefore recommend that her application be rejected.

Mrs. Pearl Armstrong (nee Garrett) for the enrollment of her minor child, Ola Martin:

The applicant alleges that she was married on June 30, 1900, to a full-blooded Osage named James Martin, who was the father of her child, Ola, born November 3, 1900, at the house of Alexander Pappin, an Osage Indian, and that her parents were present at the time of the marriage. Her statements are corroborated by the affidavits or her parents.

From the agent's report it appears that Pearl Garrett was a girl of loose character, associating alike with Indians and with white men; that he can find no record of the alleged marriage; that his predecessor in office refused to consider her application for the enrollment of her child for the reason that the alleged father could not furnish proof of his divorce from his former wife, Anna Mizer; and that the child has been given to its grandparents.

The tribal council rejected the application for the reasons that sufficient evidence was not furnished to prove that there was a legal marriage, and that no evidence of a divorce from his former wife was furnished by Martin.

The evidence shows that the mother was a woman of easy virtue and was not living with Martin at the time of the birth of the child. Although the act of Congress approved June 28, 1906 (34 Stat. L., 539), authorizing the enrollment of children born to members of the Osage tribe, does not require that the children shall be legitimate in order to be enrolled, yet as the applicant has failed to prove that her child is of Osage blood or that the father was a member of the tribe, it is recommended that her application be rejected.

Mrs. Isabella Auld, for the enrollment of her four minor children, Addie May, Archie William, Harvey, and Flora Auld:

The applicant avers that her mother, Berneice Huston, was of Osage blood and furnishes a corroborative affidavit from Eliza Dial.

From the agent's report it appears that the applicant has received rights, including an allotment of land, as a Kaw Indian, and that she has never affiliated with or been recognized by the Osages as a member of their tribe. The Osage council rejected her application.

The evidence shows that this woman was and is enrolled as a member of the Kaw tribe; that she has been allotted 396.40 acres of land as the head of a Kaw family—such allotment having been made in accordance with the act of Congress approved June 1, 1906 (32 Stat. L., 636), which limits allotments to enrolled members of the tribe on December 1, 1901, and to children born to such enrolled parents between that date and June 20, 1902. As none of her minor children are shown to have been allotted with her it is presumed they were born after June 20, 1902. Their rights as Indians would of course follow the status of their mother, through whom they inherit Indian blood.

As Mrs. Auld fails to establish by satisfactory evidence that she is an Osage Indian by blood, and has received her rights with the Kaws, it is not seen that her children are entitled to the enrollment sought. Recommendation is therefore made that her application be denied.

Henry Clay Fulton and children, Sterling Walter, 21 years of age; Fay, 13; Loyd, 9; Allie Jane, 6, and Mary Fulton, 2:

The applicant, who is 54 years of age, swears that his father was Churchill Abner Fulton, white; that his mother was a quarter breed Osage named Mary Revard; and that his parents were married in 1851. His statements are corroborated by the affidavit of a half brother, Henry Clay Fulton.

The Indian agent, who says that he firmly believes the applicants to be imposters, transmits corroborative affidavits, from Joseph Revard and Mrs. Jane Conway, respectively brother and sister of Mary Revard, who is alleged to be the mother of applicant—from which it clearly appears that Abner Fulton married Ursalea Revard; that subsequently Ursalea learned that her husband had a wife then living at Topeka, Kans., and thereupon left him; that the only child she (Ursalea) had by him was a girl—now Mrs. Mary Jane Barker: and at the time of her marriage to him in 1851, her sister, Mary, was but 9 years of age. The tribal council rejects the applications and the agent heartily approves its action.

As it is conclusively shown that the applicants are not of Osage blood it is recommended that they be denied the enrollment sought.

Monroe Harris, for himself and children whose names are not given; and his sister, Mrs. Louise Harris, and her children, Sidney, 30 years of age, Arkley, 21 years of age, Ellen, 18; Rhoda, 14; Laura, 12, and Alva Harris, 9:

The national council rejected these applications, and the agent says that there is no merit in the case, and approves the council's action.

Mrs. Louisa Harris, who says that her father was Alfred Harris, and that Monroe Harris was her brother, alleges that her father was a full blooded Osage, and her mother a white woman, and that she was born in Overton County, Tenn., where she has ever since resided. She submits in support of her affidavit sworn statements from Isaac C. Allen, J. A. Hawkins, I. G. Masters, and M. A. Christian, who say in effect that they knew the applicant's father, who was from his appearance of "some Indian blood" but of just what tribe they do not know. She also submits an affidavit dated February 1, 1902, from Andy Harris (her brother), who alleges that his father, Alfred Harris, *frequently* said that his (Alfred's) mother was a full blooded Osage Indian.

As the applicants have failed to prove their alleged Osage blood, and it is clearly shown that neither they nor their parents affiliated with the tribe or were recognized by it as belonging thereto, they are not entitled to the enrollment sought. It is accordingly recommended that their applications be rejected.

Otwin (Anthony) James, 49 years of age, for his minor children—Nora, Angeline, and Joseph Vivian James; Mrs. Josephine Thompson (a sister of Otwin James) and her son, Floyd Thompson, and Charles Thompson, son of Mrs. Josephine Thompson, for his minor children, Grace and Thelma Thompson:

The applicants allege that they are of Osage blood from Joseph James, jr. (father of Otwin James), who was mixed Osage and Kaw Indian. The evidence clearly establishes their claim of Osage blood. It also shows that Joseph James, jr., married Margaret Curley, a Pottawatomie Indian, but continued to reside among and affiliate with the Kaws, with whom he was enrolled; and that his children, including Otwin or Anthony, were enrolled with their mother as members of the Pottawatomie tribe, and were also carried on the Kaw rolls.

By a provision in the treaty of November 16, 1861, with the Pottawatomies (12 Stat. L., 1192), as modified by the treaty of March 29, 1866 (14 Stat. L., 763), and February 23, 1867 (15 Stat. L., 533), certain members of the tribe became citizens of the United States and received proportionate shares of the tribal estates, both land and moneys. Mrs. Margaret Curley and her children, including Anthony, received, sometime prior to 1876, allotments of land and proportionate shares of the annuities as Pottawatomies and thereby became citizens of the United States. Her children were thereupon dropped from the Kaw tribal rolls. In 1899 Anthony, or Otwin, and his brother applied for reinstatement with the Kaws, and the Secretary of the Interior, in a decision dated December 15, 1899, holding that they were not entitled thereto and by receiving their distributive shares of the tribal property had become citizens of of the United States, said:

"It appears, therefore, that the Pottawatomie citizens received distributive shares of all the tribal property, including the value of their lands, and that they received in addition allotments without cost, thus obtaining from the United States valuable lands, gratuitously, which were not a part of the tribal estate, or at least a part of the estate that had been acquired by purchase or by the cession of some right or thing for a consideration.

"Those of the present applicants who received distributive shares of the tribal property seem to come within the Department rule or regulation which requires Indians having equal rights in more than one tribe to elect the one to and with which he or she would belong and draw annuities (sec. 158, Indian Office regulations), and also the unwritten rule of the Department which prohibits double allotments to Indians. If admitted to the Kaw rolls, they would also be entitled to allotments with that tribe when their lands shall be distributed, as well as to annuities. Having already received gratuitous allotments, as from the public domain, they are prohibited by the rule alluded to from further allotments. And having annuities with the Pottawatomies and finally shared in that capitalized value thereof, they are also prohibited under the regulations from drawing annuities with another tribe."

In 1891 Otwin James married Rachel Pappan, a Kaw Indian, by whom he has had 9 children, 6 of which were allotted lands on the Kaw Reservation. His remaining children were born after the Kaw allotments were closed.

It is admitted by the applicant and established by the evidence that he has never affiliated or resided with the Osages, and that that tribe has never recognized him or any of his children as members thereof.

As the parents of Otwin James elected for him, under the terms of article 4 of the treaty of February 23, 1867, heretofore mentioned, to take his Indian rights with the Pottawatomies which made him a citizen of the United States under a specific provision of law therefor—he at the time of his marriage to a Kaw woman was a citizen Pottawatomie and not a member of the Osage tribe—his children would, therefore, have only such rights as Indians as they might inherit through their mother. I am accordingly of opinion, considering the facts in the case, that they are not entitled to rights with the Osage tribe and recommend that the application of Otwin, or Anthony, James be denied.

Relative to the application of Mrs. Josephine Thompson and her son, Charles Thompson, the records of the Office show that the mother and her seven children and her son Charles and one of his children were enrolled as Kaws and were allotted lands as such. Their minor children for whom they ask Osage rights were born after the lands of the Kaws were all allotted.

From the evidence it appears that these families have also been reared and still reside among the Kaws and have never affiliated with the Osages or been recognized by that tribe as members thereof. Such rights as they might have as Indians would

therefore attach to them as members of the Kaw tribe and not of the Osage tribe. I accordingly recommend that the applications of Mrs. Thompson and her son, Charles Thompson, be denied.

Wet Moccasin, or Mrs. Fred Mason, for herself and her children and grandchildren, Mrs. Rachel Rowe and 5 children, Mrs. Libbie Joles and 4 children, Mrs. Birdie Bridwell and 5 children, Frank and 3 children, John and 3 children, and Elmer Mason (she also applies for the enrollment of certain other grandchildren whose names she does not remember.)

The applicant swears that she is about 60 years of age; that her father was a full-blooded Osage named Bigheart and her mother also a full-blood Osage whose name she does not know; that she was born on the Osage Reservation and attended the Catholic school at the Osage Mission; that she was reared by a woman of the tribe named Sagy, whose husband was a full blood called White Hair; that these foster parents took her, when she was quite a small girl, away from the tribe to the northern part of Kansas, and that in 1861 she was married to a white man named Fred Mason. In support of her allegations she submits affidavits from Mrs. Lucy Woodham, Sarah Smith, George H. Bellmon, J. R. Foster, and William Bridwell.

The agent says that he is of the opinion that there is no merit in the case and approves the action of the Osage national council in rejecting the applicants. With his report he transmits affidavits from Brave, 66 years of age, Ne kah wah she tun kah, 65; Black Dog, 55; Thomas Mosier, 64, and Frank Corndropper, 58—full-blood Osages—all of whom swear in effect that the allegations of the applicant are false.

As Mrs. Wet Moccasin Mason has failed to prove by a fair preponderance of the evidence that she is of Osage blood, it is recommended that her application be denied.

Weso Pappan for his minor children, Blon and Justin, and Mitchell Fronkier for his minor children, Pansy and Maud Fronkier.

The applicants contend that they are of Osage blood, and the evidence shows that they are not to exceed one-eighth Osage blood—their children being one-sixteenth. The evidence shows also that they and their parents have always affiliated with and resided among the Kaws, and that they have not been considered as members of the Osage tribe. From the records of the Office it appears that Weso Papan, his wife, and one child were allotted lands with the Kaws, as were Mitchell Fronkier and family—including his children who were living at the time the allotments were made.

The Department has held, as cited in the case of Otwin James et al. (ante), that persons, belonging by blood to two tribes, who have under its rules elected with which tribe to be enrolled, and have received their distributive shares of that tribal property, including allotments of land, are prohibited from receiving a double allotment or drawing annuities with another tribe. It has been held also that where members of a tribe receive such distributive shares of the entire communal or tribal estate, children born thereafter are not entitled to any rights as Indians, and are citizens of the United States.

As shown by the evidence, the parents of the minor children elected to take their rights with the Kaw tribe, and have always affiliated and been regarded as Kaws. Further, they have received their distributive shares of the entire Kaw tribal property, including allotments of land. They would not therefore be entitled, under the Department's ruling, to enrollment or allotments of land with the Osages.

By the provisions of section 10 of the undated Kaw agreement, ratified and confirmed by the act of Congress approved July 1, 1902 (32 Stat. L., 636), they and their then living children, having received allotments of land, became citizens of the United States and their names were stricken from the Kaw tribal rolls. Their children born thereafter follow their status as citizens and would have only such rights as they might inherit from the Kaw estates of their parents. Although possessing a small degree of Osage Indian blood, these minor children are citizens of the United States, having been born to citizen parents, and are clearly not entitled to enrollment with the Osage tribe. It is therefore recommended that the applications of Weso Pappan and Mitchell Fronkier be denied.

Moses Plomondon:

This man swears that he is a member of the Cree Indian tribe, but has never received any benefits as such, and that he and his wife, who is alleged to be of Osage blood, moved from the State of Washington to the Osage Nation in 1873; and that he was adopted by the Osage council as a member of their tribe. In support of his claimed adoption he promised additional evidence and referred to testimony taken in 1896 in the case of Virgil Herard and Simon Clavier, whose enrollment as Osages was investigated by the Department at that time.

The testimony to which the applicant refers shows that he is a white man and was illegally enrolled with the Osage tribe in 1873, but was properly stricken therefrom in 1881 by the Indian agent; and that no record or evidence of his alleged adoption

was ever submitted by him or the Indian agent to this Office. The tribal council refuses to sanction his enrollment on the grounds that his alleged relations were not known; and the Indian agent reports that, although he had ample notice to produce further evidence in his case, he failed to submit any. As Moses Plomondon fails to prove his contention, I recommend that his application be denied.

Dora Alexander, Mollie Brooks, Susie Callahan, Sampson Crisp, Jack English, Rosa Jones, Anna Moss, Henry, Oliver, William and William Shattio, jr., Mrs. Ogeal Smith and Maggie and Ogeal Smith, Mrs. Elizabeth Tolliver; Clements, Frank R., Joseph F., Laura, Ogeal, and Royal Wilson:

The application of these persons were submitted by Joseph F. Wilson, attorney in fact. They allege that they are descendants of a negro man and an Osage woman named Ann Davis, afterwards Ann Shattio, who claimed to have been stolen when a girl by whites from the Osages and made a slave in Missouri, and that she subsequently purchased her freedom in 1846 and went to Kansas. This testimony is entirely ex parte, and fails to give the names of the alleged Osage woman's parents or of any of her relatives among the Osage tribe in Oklahoma.

The agent reports that the only one of these persons he knows is Joseph F. Wilson, who is related to the applicants, and is a negro who came from St. Louis, Mo. The national council rejects the applicants for the reasons that they are of the negro race, and "that the tribe did not have but one or two negro families, who both at present affiliate with it" and are not related in any way to the applicants.

As these descendants of Ann Davis have failed to prove that they are in any way related to the Osage tribe of Indians in Oklahoma, and neither they nor their parents have ever affiliated with that tribe or been recognized by it as members thereof, they are clearly not entitled to the enrollment sought. It is therefore recommended that their applications be rejected.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

APRIL 15, 1907.

The recommendations contained herein are hereby approved.

JAMES RUDOLPH GARFIELD, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF ASSISTANT SECRETARY.
Washington, May 4, 1908.

Messrs. KAPPLER & MERILLAT, *Washington, D. C.*

SIRS: In reply to your letter of April 30, I inclose you herewith a report from the Commissioner of Indian Affairs which will give you the desired information.

Very respectfully,

JESSE E. WILSON, *Assistant Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 2, 1908.

The SECRETARY OF THE INTERIOR.

SIR: The Office has the honor to acknowledge the receipt, by your reference, for report, of a letter dated April 30, 1908, from Messrs. Kappler & Merillat, attorneys at law, of this city, who refer to Senate resolution No. 70, for the enrollment of 37 persons with the Osage tribe, and ask certain information for use in connection with the case.

Their questions are answered seriatim, as follows:

1. There were many applications pending at the time of the passage of the act of June 28, 1906 (34 Stat. L., 539), known as the Osage allotment act, other than the 37 cases mentioned in the Senate resolution referred to. The attorneys were, on April 30, furnished a copy of a decision of the Department dated April 15, 1907, rejecting the applications for Osage enrollment of 89 persons, including some of the 37 named in the Senate resolution.

2. The Osage bill was prepared by the Osage Indians and was brought to this city by a committee acting on behalf of the tribe. The Office carefully considered the bill as presented by the Osage committee or delegation, and, with some immaterial changes, submitted it to the Congress. The provision therein repealing the act of August 15, 1894 (28 Stat. L., 305), was in the bill when it was submitted by the Osages and was not changed. At the time the bill was consid red the Office believed that the pro-

vision for the repeal of the act referred to was included for the purpose of closing the Osage tribal rolls and settling the allotment question without further litigation. It knows of no other reasons why the act of August 15, 1894, allowing an appeal to the courts by applicants alleging to have been unlawfully denied of allotments with an Indian tribe, was repealed.

3. As requested by the attorneys, there is inclosed a copy of the list transmitted August 16, 1906, by the United States Indian agent of the Osage Agency, of the names of 244 persons charged by the principal chief of the tribe with being on the rolls through fraud, such list having been furnished in accordance with section 1 of the Osage allotment act.

4. The Office has no copy of the constitution of the Osage Nation which can be furnished the attorneys as requested. They have in person been allowed to use the bound volume of the laws of the Osage Nation, and it is understood that they will make copies of such parts thereof as they may wish.

5. In answer to their request that they be furnished also with any decisions or opinions of the Department bearing on the subject of the applications of the persons mentioned in Senate resolution No. 70, the Office has to say that they have heretofore been furnished copies of the reports made to the Department on the resolution mentioned and a copy of the decision of the Department dated April 15, 1907, rejecting the applications of 89 persons for Osage enrollment. These letters contain the decisions desired.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

Persons charged with being on Osage roll by fraud.

Name.	Sex.	Relation.	Age.
			Years.
Cynthia Alberty	Female	Head	50
Lizzie Alberty	do	Daughter	15
George Alberty	Male	Head	19
Jane Appleby	Female	do	76
James B. Atkins	Male	do	22
John D. Atkins, jr	do	do	19
Elizabeth Baylis	Female	do	62
Charles D. Baylis	Male	do	19
Harry Baylis	do	do	22
Mary J. Brown	Female	do	39
Edith Brown	do	Daughter	13
Louis M. Brown	Male	Son	11
Elsie F. Bruce	Female	Head	36
Bessie Bruce	do	Daughter	16
Louisa Bruce	do	do	12
Lena Bruce	do	do	10
Adelbert Bruce	Male	Son	15
William Clem	do	Head	28
William L. Clem	do	Son	6
John E. Clem	do	do	5
James A. Clem	do	do	2
Frantz Clem	do	do	1
James J. Clem	do	Head	31
Jessie M. Clem	Female	Daughter	10
William H. Clem	Male	Son	8
James H. Clem	do	do	7
Sallie J. Clem	Female	Daughter	3
Ida Cottingham	do	Head	20
Isabella Fuller Crouse	do	do	40
Earl Crouse	Male	Son	14
Laura I. Crouse	Female	Daughter	10
Stephen M. Crouse	Male	Son	7
Dallas Crouse	do	Head	20
Rebecca Jane Darnell	Female	do	43
Anna V. Vadney	do	Daughter	15
Julia Edwards	do	Head	40
Alex Quinton	Male	Son	17
Julia Quinton	Female	Daughter	14
Agnes Quinton	do	do	10
Pearl C. Quinton	do	do	8
Elnora Quinton	do	do	4
Simon Fronkier	Male	Head	34
Florence Fronkier	Female	Daughter	10
Blanche Fronkier	do	do	8
Benjamin Fronkier	Male	Son	4
Thomas Fuller	do	Head	25
Lewis B. Fuller	do	Son	1
Charles Fuller	do	Head	22
Louis Fuller	do	do	31
Andrew B. Fuller	do	Son	4

Persons charged with being on Osage roll by fraud—Continued.

Name.	Sex.	Relation.	Age.
			Years.
Agnes Groves	Female	Head	24
Susan Harlow	do	do	44
Grace Harlow	do	Daughter	15
Belle M. Harlow	do	do	12
Charles C. Harlow	Male	Son	8
Willie Haynie (Mary Haynie)	do	Stepson	11
Adeline Harvey	Female	Head	25
Myrtle Herridge	do	Daughter	17
Joseph Herridge	Male	Son	15
Lulu Herridge	Female	Daughter	12
Ellen Hilderbrand	do	Head	59
Susanna Hilderbrand	do	do	18
Richar Hilderbrand	Male	do	27
David Hilderbrand	do	do	33
Nancy Hilderbrand	Female	Daughter	5
James Hilderbrand	Male	Head	37
Rose Hilderbrand	Female	Daughter	17
Letitia Hilderbrand	do	do	14
Susan Hilderbrand	do	do	12
Oranzonia Hilderbrand	do	do	11
Dicha Hilderbrand	do	do	6
Ruby Hilderbrand	do	do	5
Joseph Hilderbrand	Male	Head	39
Frank Hilderbrand	do	Son	8
Jasper Holloway	do	Head	54
Sarah Holloway	Female	do	18
Frank Holloway	Male	do	21
Milton Holloway	do	do	23
Andrew L. Holloway	do	Son	3
Olita M. Holloway	Female	Daughter	6
Peter Javine	Male	Head	54
Benjamin H. Javine	do	Son	17
Hasread Javine	do	do	15
Viola M. Javine	Female	Daughter	12
Ople Javine	do	do	7
Roy B. Javine	Male	Son	10
John Javine	do	Head	51
Ollie Javine	Female	Daughter	16
Andrea Javine	do	do	13
Ora E. Javine	do	do	12
Joseph Javine	Male	Son	9
Anthony Javine	do	Head	19
John Javine	do	do	24
George M. Javine	do	Son	2
Earl Thomas Javine	do	do	1
Laura Jones	Female	Head	20
Charles Labadie	Male	do	35
Haxel Labadie	Female	Daughter	8
Frank Labadie	Male	Son	6
Alvin L. Labadie	do	do	4
Nita Labadie	Female	Daughter	4
William H. Labadie	Male	Head	21
Ella Labadie	Female	do	19
Frederick Labadie	Male	Son	16
Ernie Labadie	do	do	15
Joseph Labadie	do	do	13
Edward Labadie	do	Head	40
Milton Labadie	do	Son	8
Rose M. Labadie	Female	Daughter	5
Robert E. Labadie	Male	Son	3
Charles W. Labadie	do	do	1
Frank Labadie	do	Head	45
G. B. Labadie	do	Son	14
Paul P. Labadie	do	do	11
John Labadie	do	Head	19
Albert Lombard	do	do	60
Irene Lombard	Female	Daughter	14
Bessie Lombard	do	do	12
Robert A. Lombard	Male	Son	4
Clara Lombard	Female	Head	20
Nina Lombard	do	do	18
John Lombard	Male	do	22
George W. Lombard	do	do	27
John E. Lombard	do	do	20
Walter Lombard	do	do	28
Lucy Lombard	Female	Daughter	5
Lois Lombard	do	do	3
Samie Lombard	do	do	2
Olive C. Lyman	do	Head	43
Paul S. Lyman	Male	do	40

Persons charged with being on Osage roll by fraud—Continued.

Name.	Sex.	Relation.	Age.
			Years.
Agnes Lyman	Female	Daughter	3
Capitola Lyman	do	do	1
Arthur J. Lymban	Male	Head	36
Joseph Mackey	do	do	28
Eva Mackey	Female	Daughter	8
Tenne Mackey	do	do	4
Grace Mackey	do	do	2
Warren T Mackey	Male	Son	1/12
William B. Mackey	do	Head	23
Cecelia Mackey	Female	Daughter	6
Bertha M. Mackey	do	do	1
Grover Mackey	Male	Head	20
Alex Martin	do	do	60
Bertha Martin	Female	Daughter	11
Lombard Martin	Male	Head	18
Lee Martin	do	do	29
Jane L. Martin	Female	Daughter	8
Edgar E. Martin	Male	Son	5
Lennie Martin	Female	Daughter	5
Emery Martin	Male	Head	25
John D. Martin	do	Son	1/12
Ellen McDaniel	Female	Head	30
Frederick W. McDaniel	Male	Son	10
Emma McGath	Female	Head	27
John W. McGath	Male	Son	9
Ellen McComb	Female	Head	28
Jessie McComb	do	Daughter	11
William M. McComb	Male	Son	8
Gladys I. McComb	Female	Daughter	5
Rachel B. McComb	do	do	3
Naeoma A. McComb	do	do	1/12
Charles Moncravie	Male	Head	37
Fred Moncravie	do	do	31
Henry Moncravie	do	do	33
Henria E. Moncravie	Female	Daughter	2
John Moncravie	Male	Head	36
John N. Moncravie	do	Son	9
Alexander Moncravie	do	do	7
Barada Moncravie	Female	Daughter	5
Vivian L. Moncravie	do	do	2
Anna Anita Moncravie	do	do	1/12
Gertrude Murphy	do	Head	24
Alice Murphy	do	do	22
Elizabeth Murphy	do	do	20
Nettie Murphy	do	Daughter	16
William Musgrove	Male	Head	28
Carl R. Musgrove	do	Son	1
Willis Ella Musgrove	Female	Daughter	1/12
Joseph Perrier	Male	Head	29
Samuel Perrier	do	do	38
Leo Perrier	do	do	25
James Perrier	do	do	35
John T. Perrier	do	Son	12
James F. Perrier	do	do	6
Napoleon Perrier	do	Head	48
Louis F. Perrier	do	Son	17
Nina Perrier	Female	Daughter	15
Leo Perrier	Male	Son	12
Peter Perrier	do	do	9
Lota Perrier	Female	Daughter	8
Owen Perrier	Male	Son	4
Thomas Perrier	do	Head	22
Roy B. Perrier	do	Son	1/12
Eugene Perrier	do	Head	23
Ray L. D. Perrier	do	Son	1/12
Franklin Quinton	do	Head	19
Richard Martin	do	do	32
Claude Martin	do	Son	9
Jane R. Rairdon	Female	Head	47
Louis Miller Rairdon	Male	Son	17
Ida Rairdon	Female	Daughter	14
Wendall Rairdon	Male	Son	6
Elizabeth Reece	Female	Head	22
Antwine Rodman	Male	do	33
John Ross	do	do	61
Floyd F. Ross	do	Son	9
George Selby	do	Head	26
John H. Stevens	do	do	40
Mildred V. Stevens	Female	Daughter	2
Madeline Stevens	do	Head	64
Mary Stevens	do	Daughter	12

Persons charged with being on Osage roll by fraud—Continued.

Name.		Sex.	Relation.	Age.
				Years.
James E. Taylor	Grandchildren of Ellen Hilderbrand	Male	Orphan	13
John F. Taylor		do	do	11
Hiram Taylor		do	do	9
Fanny Taylor		Female	do	8
Agnes Taylor		do	do	6
Anna Taylor		do	do	2
Frederick D. Turner		Male	Son	11
Mary B. Turner		Female	Head	24
Aggie Ware		do	do	36
Julia Ware		do	Daughter	12
Nancy Ware		do	do	10
Aggie Ware		do	do	8
Rosa L. Ware		do	do	6
Henry H. Ware		Male	Son	4
David Ware		do	do	3
Paul Wheeler		do	Head	34
Merritt J. Wheeler		do	Son	3
Geneva Wheeler		Female	Daughter	2
Elmer Wheeler		Male	Head	27
Alma Wheeler		Female	do	20
Anna Wheeler		do	do	23
Lavaria Brock		do	do	26
Susan Wheeler		do	do	29
Mary Wilson		do	do	28
William E. Wilson		Male	Son	9
Julia K Wilson		Female	Daughter	7
Banis Wilson		Male	Son	5
Andry Wilson		Female	Daughter	2
Sallie Hooper		do	Head	35
Mary Hooper		do	Daughter	12
Clara Siggins		do	Head	43
Andrew W. Siggins		Male	Son	15
George Hilderbrand		do	Head	23

Now, when it comes to going back, with the strong inducement that is here, to prove that persons had Osage blood years ago, I think the opinion of the Court of Claims in the case of Whitmire, trustee, *v.* The Cherokee Nation et al. (30 Ct. Cls., 146) is very apropos. The court said:

The court believes that the roll affords the best evidence which exists or which can be procured. The large amount to be received by every individual complainant—more than $250 for each person, more than $1,000 for every family of the freedmen—the unsettled state of the country, the scattered character of the population, the remote places in which they live, and the remote dates to which the investigation must extend—from 1866 to 1894—are conditions which offer the strongest inducements to fraud on the one side and to intimidations and discriminations on the other. It may be that the Wallace roll was extended beyond the true number of the persons entitled to be placed thereon, but if it was, the fault was with the Cherokee Nation, who could have contested every name that was placed upon it, and who had the means of exposing every error that may have existed; and the United States spared no pains to make the roll a true exhibit in the case. The court believes that the difficulties in arriving at a true result which existed then will be greatly multiplied now.

If that were true, as stated by the Court of Claims, then how much truer it is of the existing state of affairs here where you have the case of applicants, many of whom are claiming relationship to a woman who, according to the decision of the Department and the official records, died about 1833 or 1834, where it means from fifteen to thirty thousand dollars to be an Osage, and where, as I am reliably informed, the attorneys who prosecute the case have contingent contracts of 50 per cent of whatever is recovered.

I say that the inducement is exceedingly great, and I say that when the committee comes to consider, as it will consider, the fact that some of these persons who are attorneys in fact for the applicants

are asking you to consider their affidavits or their statements, on questions of fact as to blood, you are entitled to take them as every court does, as having the weight of depositions of interested persons. When it comes to the question of fact, I desire to call your attention to the record on page 49 of the Osage Annuity Roll contests, and I will offer in evidence an extract from that.

The Commissioner of Indian Affairs found that this Susan Larine, through whom a large number of these applicants are claiming, as a matter of fact died in 1833 or 1834, and the Commissioner of Indian Affairs says that "this is true as shown by the records of our office showing payments to the guardian." So we have the documentary evidence of death. With that documentary evidence in the record, with the case in that situation, some of these parties claiming through Susan Larine offer testimony of persons who say they met her in the forties—1844 or thereabouts. Now, those persons who said that they met Susan Larine can not be mistaken merely as to the date, because these two witnesses were not, as a matter of fact, born at the time Susan Larine died, namely, in 1833 or 1834, one of them not being born until 1834 and the other one not until 1837. You find in the records a reconcilement possibly of their statement and likewise of the difficulty, when it comes to tracing relationship back to the distant past, when you find one other person taking the stand and testifying that there was a Susan Larine, or a woman of that name, who he knew about 1847, and that that Susan Larine was not an Osage at all, but was a Creek Indian in Missouri.

We have that situation and you begin to see the difficulties. You have a person who has never been in the Osage country, and who has grown up perhaps to be forty or fifty years of age, and perhaps whose father was not in the Osage country, but who claims to have known people who lived in 1825—seventy or eighty years ago. With this strong inducement that is held out of an enrollment being worth $30,000, they are coming here and asserting a right now at this late date to participate in the distribution. Whenever in the past these persons have come before the Osage council the council has considered all these facts. That council is able to arrive at a just conclusion. It is stated here that the only reason upon which the council denies the right of enrollment is that they do not want to make any more Osages. I say, upon the authority of the council, and upon the authority of their minutes, that that statement is not correct. The Osages, wherever those persons have applied for enrollment—and this is true of what they did fifteen or twenty years ago when enrollment was not worth very much, and they had not found oil, and the lands were not so valuable, and it was not known to be of so much account as it is to-day—the Osages would go back to the old men of the tribe and the councilors, inquired to find out if the persons had any Osage blood, and to whom they were related, and if they found that they had Osage blood and if they presented evidence of their good faith and intention to live with the Osages in the future, then frequently the Osage council acted favorably upon their application for enrollment. This brings us to what is called the "Clem case." The Clems came to the Osage country along—I may be wrong as to the dates, but along about 1889—and application was made for citizenship. The evidence is undisputed, it is admitted, that the Clems paid some of the then members of the Osage council a bribe. It is admitted

that some witnesses were bribed. I will withdraw the statement so far as saying that it is admitted that they were bribed is concerned. It is admitted that money was given the councilors and witnesses, but it is attempted to be explained upon the ground that they had rendered some services as interpreters, or something of that kind. But money was paid, and it is admitted to have been distributed by a leading member of the council to the councilmen. In that situation the person was admitted, claiming by descent a long way back. Through the payment of the money they got him upon the roll.

Having obtained an entry upon the roll by the payment, as is admitted, of money to the councilmen, some dispute or trouble subsequently arose over the claim that the agreement had not been entirely lived up to, and the fact of this payment of money to the councilmen came out. There was no question that the money had been paid. That was true absolutely. Finally it was held by the Department as to one of the parties, a woman, that she may have thought that this payment of $300 was a usual and customary thing for getting on the roll, and that it was not intended for bribe money; it had been paid, but it had not been shown beyond question to have been paid for that purpose.

That case was passed on and the authorities and the agent of the nation were all in favor of the disenrollment of the claimants on the ground that the enrollment had been procured by fraud and corruption, and that they had no Osage blood. Both of those findings were made. The matter came before the Commissioner of Indian Affairs and he likewise so found. When it came before the Secretary of the Interior, however, there it was held that they would give them the benefit of the doubt, and while the money may have been paid to a person and a number of councilmen had got it, nevertheless they would not strike off those persons, because, the Osages having once put them upon the rolls, of course those rolls were to be taken with the burden against the Osages; hence the Clems managed to get through. Meanwhile, between 1896 and 1906 a good bit of this information came to light, and when the bill providing for allotments was sent up here it provided that there should be a right in the Osages to try the cases of any persons who had gotten on by fraud, and if it were found that they were not entitled, that then they should go off the rolls. The Osages had no attorney to represent them. The bill was introduced, and it was so reported, as the print reported by Mr. McGuire, I believe, shows.

It came over to the Senate in the closing days. The persons who were seeking to put applicants on the rolls succeeded in procuring two amendments. Perhaps the force and effect of them was not fully considered, at least the Osages did not have a hearing. By those two amendments, in the first place, it was provided that there should be a reconsideration of all cases pending at the date of the final passage of the act, and agreed upon between the Government officers and the Osages. The first bill provided they were to reconsider cases pending at the date of the introduction of the bill. By that change of the date the act was broadened and those persons who were watching affairs rushed in some stock or formal applications to have their cases pending. Furthermore, there was an additional amendment limiting what you might do under the provision with relation to fraud.

The ordinary doctrine is that you can impeach for fraud at any time and wherever shown, and every decision of every court that I know of says that in fraud cases a wide latitude should be given in the introduction of evidence. Our court of appeals of the District of Columbia has so held and the Supreme Court of the United States, and practically all of the States have so held. But in the closing days somebody succeeded in getting an amendment through in which it was provided that the Osages could remove only for fraud upon newly discovered evidence.

The matter came up and again it was found that those people were not of Osage blood; that they had no Osage blood, and likewise it was found that this payment of money, which it was admitted had been given to the several members of that council and distributed by one of the leading members, was bribery money, and that certain witnesses had been bribed to give testimony and the payments to those people were admitted, as I say. What it was done for is the only question.

Senator SUTHERLAND. How many cases are there, in your opinion, upon the rolls that ought not to be there because of fraud?

Mr. KAPPLER. The chief, under the act of 1906, certified 244.

Mr. MILLARD. I would think probably 125.

Senator SUTHERLAND. Still remaining upon the rolls?

Mr. MILLARD. Yes, sir.

Senator CURTIS. They are the same cases that were tried by the Secretary of the Interior?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. How many altogether were enrolled?

Mr. MILLARD. Twenty-two hundred and thirty as the full enrollment, including Mrs. Appleby.

Senator SUTHERLAND. The opinion of the nation is that 120 are fraudulently upon the rolls?

Mr. MILLARD. Yes, sir.

Mr. MERILLAT. I would like to ask this question of the agent, Mr. Millard, how many all told were contested?

Mr. MILLARD. Two hundred and forty odd.

Mr. MERILLAT. The fact is that as to the great mass of them there was no contest at all; everyone admitted that they were Osages. They had been there all the time and they were admitted to be Osages.

When the matter was presented the attorneys for those persons who were alleged to be fraudulently upon the rolls, themselves endeavored to prevent the opening up of the cases by the allotting commission on the ground that there was not sufficient newly discovered evidence to open up the cases at all.

Senator SUTHERLAND. In a general way, in what did the fraud consist?

Mr. MERILLAT. The fraud consisted, in a general way, in bribing witnesses to perjure themselves and in bribing members of the council to admit persons to enrollment, the council men getting a specific amount, as it is claimed, and in some instances they were to get so much per quarter for admitting the persons to the rolls, and ignoring the fact that when they admitted the persons to the rolls of course they really took from themselves something.

Senator SUTHERLAND. In any of those cases where any such fraud existed as would authorize a court of equity to set aside a judgment, *did the court so* hold upon that ground?

Mr. MERILLAT. Yes, sir; unquestionably.

Senator SUTHERLAND. The fact that it is claimed that testimony was false—some testimony it is admitted was false, as I understand it—would not justify a court of equity in setting it aside, because that is one of the questions which the court of original jurisdiction passes upon, the credibility of witnesses.

Mr. MERILLAT. But this false testimony went to the very point that they had secured witnesses to swear to what was not true; to swear, for example, as to the descent of persons from a certain Susan Larine, whom they claimed to have seen in the forties, when the records of the Indian Office show that as a matter of fact Susan Larine had died in 1833 or 1834, and they have the documentary proof of it, so it was impossible that Susan Larine could have been living at that time and could have had the descendants that was stated.

But that matter, you see, had come up in 1896. Now, when it came up in 1906 that evidence which had been introduced then and on which the claimants had finally succeeded in getting through in the Secretary's office after the two lower tribunals had found against them, a large part of that evidence was excluded.

Senator SUTHERLAND. These were not ex parte hearings, were they? They were contested?

Mr. MERILLAT. Both sides had an opportunity to appear and to cross-examine witnesses.

Senator SUTHERLAND. The applicant contended that a certain state of facts existed and produced witnesses to substantiate his claim?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. The opposite side had the opportunity of showing that the statements of the witnesses of the applicants were incorrect?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. Do you understand that in a case of that kind a court of equity could review the action of the court of original jurisdiction?

Mr. MERILLAT. If the court of equity should find that the court of original jurisdiction had been induced to act and pass its decree because certain testimony had been presented to it, then it could do so. Not only that, but you have a different state of affairs here in which the very body that ought to pass upon the person's right, namely, the national council, under their constitution, had been bribed to decide in their favor. So you have that element, and once they get upon the roll then they have in their favor the strong weight, or the burden of presumption, I should say, and that is the fact of enrollment.

Senator SUTHERLAND. I am not speaking of the case of bribery, where it can be clearly shown that a witness has been bribed or suborned; but I am speaking of the case where it is claimed that some witness in the trial of the case has not told the truth or sworn falsely. Do I understand that in a case of that kind a court of equity would have jurisdiction to set aside the judgment of the trial court?

Mr. MERILLAT. Yes, sir; provided they can identify the person who would benefit by the false testimony that was given.

Senator SUTHERLAND. If that is true, then it would enable a court of equity to review pretty nearly every judgment that is contested,

because witnesses differ on one side and claim that the witnesses on the other side have not told the truth. I do not understand that a court of equity could review the matter in that collateral way.

Mr. MERILLAT. Yes, sir; where you can show that the original court has been induced to pass a decree under false testimony, which false testimony is procured to be made by the party who is to benefit, and that is this case. The claim here is that the applicant is the person who had given the money to the witness who falsely testified.

Senator CURTIS. May I ask you a question there? You may have explained it while I was out of the room. Is there any explanation in the record why the Secretary sustained the contention of this applicant and enrolled her or him, whatever it is? Would you say the records in the office show that the party from whom she claimed to have her rights died in 1833? How did he get around that; what did he say about it?

Mr. MERILLAT. Apparently he may have thought there were two Susan Larines, but there is no evidence anywhere in the record that there was, and the Secretary got around this by saying that a large part of this testimony has been once introduced; hence it was not newly discovered evidence.

Mr. HEMPHILL. The Senator is speaking about the first decision. It is all set out clearly in Judge Vandaventer's decision.

Senator CURTIS. Then do not read that; I will read it in the record.

Mr. MERILLAT. Now, when the second investigation came up the Osage council was prevented from bringing in and having considered a large part of this testimony taken in 1896 on the ground that it was not newly discovered evidence. The allotting commission, however, and the Commissioner of Indian Affairs found that the strict technical rule should not be applied and found that the person applying was not of Osage blood and found that the charges of bribery had been fully sustained.

Senator SUTHERLAND. I will ask you right at this point this other question which I neglected to ask you before—if a court of equity would have jurisdiction to determine the question as to whether or not a judgment under these circumstances was fraudulent, and if fraudulent set it aside?

Mr. MERILLAT. Yes, sir.

Senator SUTHERLAND. Why would not a court of equity have jurisdiction in this case without any action of Congress at all? The general rule is that fraud vitiates everything—contracts and judgments and everything else—and if it can be shown to a court of equity that witnesses were in fact bribed and suborned, and judgments rest upon that kind of testimony alone, and if that confers jurisdiction upon a court of equity in the ordinary case, why would it not in this case without any act of Congress upon the subject at all?

Mr. MERILLAT. That opens up a serious question, in which the position of the Indian tribes and the Government of the United States have differed for years. It may be that you are correct, Senator, in that position; I would not say that you were not. Again, it may be held, however, that the act of Congress of 1906 was a limitation upon the courts as well as anyone else; that that had created a special tribunal that should pass upon this question, and that even if you went into a court of equity there you should be bound by the rules of evidence that have been applied to the case.

Now, whether that would hold true or not I do not know. The decisions have gone so far as to the plenary power of Congress to make rules of evidence and rules of property, etc., with respect to Indian property, distinguishing it from the common law.

Senator SUTHERLAND. But in this case you can not go to the courts upon any ordinary question connected with it, because the legislation provides that the holding of the decision of the Secretary should be final. Now, if the decision of the Secretary is induced by fraud, it is no decision; it is void?

Mr. MERILLAT. I think that is correct.

Senator SUTHERLAND. And you can go to a court of equity certainly and present these facts, and the court would have jurisdiction of it, and if it found your contention was correct it would set it aside without an act of Congress.

Mr. MERILLAT. If we did not have an act of Congress before we get to the merits of that case, with all the difficulties that would be introduced, we would be three or four years litigating on various technicalities. It would prevent a determination. That is my judgment as to the legal entanglement that would come if we attempted to go into the courts, and meanwhile, of course, the Osage property is coming to a time when it ought to be divided up. Congress desires it and the Osages desire it, and there is a strong feeling throughout all that country, not only with the Osages, but elsewhere, in favor of what we call the bill of peace, namely, after a long time, an opportunity of decision, will come a day when what is settled will be regarded as settled.

Senator SUTHERLAND. Now, still further, if this is not the kind of case of which a court of equity may take jurisdiction, independently of any act of Congress, then what do you say to this proposition, that the judgment having been made final by the act of Congress, and the property rights having vested under the judgment, what right would Congress have to say that that judgment should be vacated and reconsidered by the court?

Mr. MERILLAT. That matter was passed upon I think, by the Supreme Court of the United States in one of these Choctaw and Chickasaw citizenship cases in which it was held that right had vested, and the Supreme Court of the United States said that Congress, although it had provided one tribunal, and had said that their findings should be final, and that in a sense it might be said or claimed that property had vested, nevertheless it had not so vested as to prevent consideration. That is the case of Stephens——

Senator CURTIS. A reconsideration?

Mr. MERILLAT. A reconsideration; and that Congress having established one mode of determination as to who should share in this communal property, and said that should be final, nevertheless if Congress chooses to reconsider its determination and provide a new method, still that was constitutional. That was the case of Stephens *v.* The Cherokee Nation.

Senator CURTIS. In that case the patents had not issued as they have in this Osage country?

Mr. MERILLAT. When those patents issue they likewise issue with a limitation upon them, and of course it follows that where the person can not transmit them to some other person who shall be a bona fide

holder for value without notice, that proposition comes in, for when a patent issues in this case at first, it issues to the original person.

Senator CURTIS. And subject to certain restrictions?

Mr. MERILLAT. And subject to certain restrictions, and as long as it is in the hands of the person who was guilty of the fraud there can be a readjudication. If it had passed out of that person's hands into the hands of a bona fide holder without notice, then you could not.

Senator SUTHERLAND. Suppose you and I have a controversy about the ownership of a piece of land and I bring suit against you; the case is brought and witnesses are heard, and the court determines that I am the owner of the land and final judgment is passed. Suppose in that case there is the right of appeal if I go to the Supreme Court and follow out ordinary remedies. The Supreme Court affirms the decision and that is the end of it under existing law. Now, can the legislature, where it has jurisdiction of it, or Congress, where it has jurisdiction, pass a law which will permit you to reopen that case and relitigate it?

Mr. MERILLAT. I doubt that; but I think under established principles, if the whole thing has been induced by fraud, in an ordinary case you can——

Senator SUTHERLAND. That is another question. I am supposing now a case where you have not the ordinary remedy of going to a court of equity to set aside the judgment as a fraudulent judgment.

Mr. MERILLAT. I think that is res judicata, Senator; I do not think you can collaterally attack it.

Senator SUTHERLAND. My point is this—if I am right in the suggestions I am making about the two propositions—that Congress ought not to pass a law authorizing you to go to court with these cases that have already been passed to judgment, because in the one case, where the judgment is fraudulent, you already have your remedy in the ordinary court; in the other case, where you have not that remedy, because it is a case of fraud, such as will give a court of equity jurisdiction, Congress is powerless to confer any remedy, because it would be to divest the person who has secured the judgment of the vested right?

Mr. MERILLAT. No, sir.

Senator SUTHERLAND. I merely wanted to make that suggestion. I am not certain of it myself.

Mr. MERILLAT. That would not be true under the patent which a person would get in this case, which is a restricted patent, under the manner in which it is alleged that they secured the rights.

Now, in much stronger cases, the cases of Stephens *v.* The Cherokee Nation and Robinson *v.* The Choctaw Nation, it was held that Congress has the right to pass such legislation, and that notwithstanding the person having secured a final judgment, and the law saying that it should be a final judgment, the Supreme Court of the United States has said no, it did not matter, if Congress wanted to reopen it, it could do so until such time as the rights completely vest and pass out of the applicants.

Senator SUTHERLAND. What case was that?

Mr. MERILLAT. It is Stephens *v.* The Cherokee Nation and Robinson *v.* The Choctaw Nation. (174 U. S., 445.)

Now, carrying it along a little further, we had a case that brings up what you had in mind. That was the Belle Frost case. There the

Secretary of the Interior had the right to reserve from allotment certain lands in the Chickasaw country for town-site purposes, if he so desired, and the balance should be thrown open to allotment among all Cherokees. The Secretary turned down the recommendation of the Dawes Commission that certain lands should be made an addition to the town site of Mill Creek. The lands thereupon became by virtue of that very act open to allotment. Belle Frost selected this land as part of her allotment by allotment certificate, not a patent. The Secretary of the Interior afterwards wanted to change his mind, ignoring the fact apparently that the appropriation act had ended the town-site work, but that was immaterial. However, he then said, "I reserve this land for town-site purposes and cancel the allotment of Belle Frost and direct no patent issue." We held that rights had vested in her. He had that one guess; he had exercised that and said he did not want that land for town-site purposes, and she having lawfully selected that land was entitled to it, and up to date we have won in the supreme court of the District of Columbia and in the court of appeals in the District of Columbia, and the Government has taken it to the Supreme Court of the United States.

But to come back to the Clems. On this rehearing, under the act of 1906, both the allotting commission and the Commissioner of Indian Affairs found the people of no Osage blood, that the whole thing had been the result of bribery, and recommended they be knocked off the rolls. When we went to the Secretary of the Interior, he reversed these findings by knocking out a large part of the evidence as not newly discovered evidence and said that the presumptions of enrollment and other things were sufficient to overcome such testimony as was in after you eliminate evidence that he did not think under the statutes he could consider.

Now, let us take one step further, and you will see how far this goes. Thereupon the Hunts, claiming through the same person, and not being on the rolls, endeavored to get placed upon the rolls, and the Secretary of the Interior held that they not being upon the rolls he was entitled to consider and would consider the entire record, and consider it on its merits without any presumption that would go with enrollment, and refused them enrollment and said that, "It does not follow because before I was limited by the act of Congress and could not consider the whole question that I now, when I can consider the whole question, will put these people on the rolls." He found that they were not entitled to enrollment and denied them enrollment.

Mr. HEMPHILL. Have you any decisions since the last decision of the Clem case or the Hunt case?

Mr. MERILLAT. I have the decision of the Secretary of the Interior, and I will put it in the record.

Mr. HEMPHILL. Have you the date of it?

Mr. MERILLAT. No; but I will give it to you.

Mr. HEMPHILL. You are entirely mistaken about that.

Mr. MERILLAT. I am confident I am not. The Secretary of the Interior said that he would not put the Hunts on the roll, denied them enrollment, and denied them for the reasons stated in the Clem case.

Mr. HEMPHILL. That was way back and had nothing to do with the recent decision, and after the recent testimony was put in in the Clem case.

Mr. MERILLAT. I desire to put in the record the decision of the Commissioner of Indian Affairs and the Secretary of the Interior on this Clem case.

The decisions are as follows:

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, July 23, 1907.

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit herewith for your final determination a letter dated June 19, 1907, from Charles E. McChesney, chairman of the Osage allotting commission, together with the record transmitted therewith in Osage contested enrollment cases Nos. 323 to 331, inclusive, embracing the following members of the so-called Clem family: James J., Jessie M., William H., James H., Sallie J., William, William L., John E., James A., and Frantz Clem; Clara Siggins, Andrew Siggins, Sallie Hooper, Mary Hooper, and Willia Haynie.

These cases have arisen under the act of Congress approved June 28, 1906 (34 Stat. L., 539), entitled "An act for the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes."

The record contains the findings of the Commission that newly discovered evidence sufficient to warrant a reopening of the case had been adduced by the contestant.

After the introduction of evidence by the contestees, Commissioner McChesney finds that the defendants perpetrated a fraud upon the Osage Nation and upon the Interior Department in procuring their enrollment as members of the Osage tribe of Indians by bribing the Osage national council, by presenting false testimony in support of their applications for enrollment, and recommends that their names be stricken from the roll of the Osage Nation and that they be divested of all the rights which have accrued.

Commissioner Shepard makes no recommendation because, in his opinion, the case presents legal points on which a lawyer only can intelligently pass, and he can not say that he does or does not think the names should be retained on the roll.

Commissioner Black Dog finds for the nation.

The scope of the investigation authorized by the act is clearly apparent therein, and it would appear that the findings of the Secretary of the Interior in the former investigation that the contestees were entitled to remain on the roll should not be disturbed except it be shown by newly discovered evidence that their names were placed thereon by fraud.

The Clem family were enrolled on the records of the Osage Nation December 24, 1889, and on April 6, 1898, the Assistant Attorney-General for the Department, reviewing the evidence adduced before the Commission of 1896, recommended that they be continued thereon, which recommendation was concurred in by the Department April 11, 1898.

Considering the evidence for the contestant, Thomas Mosier swears that he acted as interpreter in the enrollment of the contestees. His evidence for their removal is in part hearsay and does not cover any point not covered by the former investigation, except as to statements made to him by White Hair relative to a promise of Mrs. Clem to pay White Hair certain sums of money quarterly, and the receipt by him of $30 from Mrs. Clem, to be paid to Chief White Hair.

By the testimony of witnesses Pettit and Rogers the contestant seeks to show newly discovered evidence by means of a conversation that took place between the witnesses and White Hair subsequently to the enrollment of the Clem family, to the effect that when White Hair gave his evidence in the interest of the contestee he did so under promise of receiving money from the defendants for testifying as to their Osage blood; that after so testifying the defendants refused to pay him the sum agreed on, and that the evidence given by him in their behalf at the time of their enrollment was not true.

Pettit testified that he reduced the statements of White Hair to writing, but the paper was subsequently destroyed by fire; that at the time of the investigation in 1896 he wrote out, swore to, and filed a statement of the above with the Commission, then taking evidence in the case.

Mr. McChesney states in his report on this case:

"The Commission is unable to find the statement referred to by Pettit as handed to the Commission of 1896 in the records of said case, and inasmuch as the same is not referred to in the petition of the Assistant Attorney-General above set forth, or in the opinion of the honorable Commissioner of Indian Affairs of date December 29, 1897, it is concluded by the Commission that such statement, if made by said Pettit, was mislaid and was not considered in the previous investigation, and is now newly discovered evidence."

By the witnesses Jane Appleby and Cypian Tayrian, both of whom testified before the Commission in 1896, the contestant attempts to prove the absence of Osage blood in the Clem family. It is believed their evidence is not competent, as they were present at the prior hearing and gave evidence on the same question before the Commission in 1896.

Frank Revelette testified that he is 66 years old, knew Susan Larine, from whom the contestees allege descent, in 1847, at Kansas City, when he was at the age of 4 or 5 years, and that she had no Osage blood, but was a Cree Indian from the northern part of the United States on the Red River. As his evidence is contrary to a fact established by the treaty with the Osages of June 2, 1825 (7 Stat. L., 240), i. e., that Susan Larine is a half-blood Osage, it is immaterial, incompetent, and not newly discovered if Susan Larine, from whom the defendants claim descent, is the identical person mentioned in the treaty. But on this point the whole record adduced in this and the prior hearing is very conflicting. If the Susan Larine, from whom the defendants allege descent, is not the Susan Larine mentioned in the treaty of 1825, the importance of the testimony of Revelette becomes apparent.

The evidence of George W. Keeler is to the effect that the Clem family borrowed $3,000 from him on their note and chattel mortgage in 1896, to be used in the payment of attorneys' fees. No direct fraud is shown by the evidence of this witness, although from the circumstances under which the loan was negotiated, it might be held as corroborative of the allegations of other witnesses that fraud by means of bribing the Osage national council to vote in favor of the enrollment of the Clem family was practiced.

Witnesses Joseph Boulanger and J. B. Trumly testified to the relationship between White Hair and the Clem family, but nothing definite is established by them except they, being members of the White Hair family, never heard of Mrs. Clem being a member of that family.

The evidence of Saucy Calf is the first important testimony adduced as to the perpetration of fraud on the nation in the enrollment of the Clems. He was a member of the council which acted favorably on the application of the defendants, and admits the receipt of $20 paid to him by James Big Heart; that he was informed by other councilmen that they had received similar sums from the same source, and that while no money was promised him prior to the casting of the vote, he admits that his vote in favor of the defendants was given at the solicitation and request of Big Heart.

Witness James Big Heart testified that the contestees employed him as their agent at the time of their enrollment; that he was paid $200 for such services, and in addition was allowed $200 more for distribution among the councilmen; that he approached seven or eight members, promising them $25 each for favorable votes in behalf of the Clems, and that the sums promised were paid as agreed. This testimony conflicts with that of Saucy Calf as to a promise to pay before the vote was cast. Saucy Calf says it was not made until afterwards, while Big Heart says it was made before. However, it is believed that this variance is immaterial; but upon the testimony of these two witnesses, corroborated by the hearsay evidence of witnesses Mosier, Pettit, and Rogers, the case of the nation that the council enrolling the Clems was bribed, rests; and if given credence, it is newly discovered evidence sufficient to warrant a reopening of the case, as, in the opinion of the Office, the only questions that can be considered as in any way affecting the rights which the defendants gained by enrollment are: Was fraud practiced to procure their enrollment, and has any evidence in support of the contention of the tribe that fraud was practiced been adduced at the hearing before the present Commission.

It is not believed that the constitutional right of the national council under the Osage constitution to adopt the Clem or other families can be considered in determining the rights of the defendants to remain on the Osage rolls under the act authorizing the investigation of fraudulent enrollments.

From the evidence in behalf of the nation, the Office is of the opinion that a prima facie case of fraud was established sufficient to warrant the Commission in reopening the case. While a great deal of the testimony by which it is established would not, under strict construction of the rules of evidence, be admissible as competent in a court of law, that being especially true of the testimony of Pettit and Rogers as being hearsay, and of Saucy Calf and Big Heart, who might possibly be termed accomplices under their own admissions and their evidence rejected under a strict construction unless confirmed and corroborated in material parts by credible witnesses; and while the evidence of either Pettit, Rogers, Saucy Calf, or Big Heart might be considered irrelevant and inadmissible when taken alone, when considered together and in connection with the testimony of Keeler and with the record adduced at the former hearing, its relevancy is apparent, and that testimony irrelevant when admitted might become relevant by the admission of other testimony is well established.

The defendants admit the payment to Big Heart of $300, contending that he was to act as their interpreter, but fail to show that he acted as such, and admit also that three other members of the tribe received money for similar services. The Office believes that this admission is sufficient to corroborate the evidence of Big Heart that he was bribed and makes his evidence and that of Saucy Calf, Pettit, Rogers, and Mosier competent and admissible under the act.

In the briefs filed by attorneys for the defendants they contend for a strict construction of that clause in the act relative to newly discovered evidence, and maintain that evidence incompetent before a law tribunal should be held incompetent and inadmissible in this case. They cite numerous authorities that the evidence of contestant's witnesses would be inadmissible before a court of law, and these authorities are certainly in point under a strict construction of the rules of evidence. But was that the purpose and intention of the act? The Office is of the opininon that it was not. The act provides that the Secretary of the Interior shall carefully investigate these cases and determine which of said persons, if any, are entitled to enrollment.

Under the act as interpreted by this Office the Secretary of the Interior has full authority to pass upon the admissibility of any evidence submitted, as the investigation which he is authorized to make is unlimited by the act, except that in cases of the character of this one the evidence must be newly discovered. This the Office believes means simply that it must be evidence not considered at the prior hearing, but in no way limits the weight which shall be given to such evidence.

It should be remembered that the majority of the witnesses for the nation are Indians unfamiliar with the white man's law, and their evidence should not, in justice to the tribe, be considered under technical rules. If the Department is satisfied from the evidence that fraud has been practiced to procure the enrollment of the defendants on the Osage rolls, the Office believes that it matters little whether the evidence by which this conclusion is reached would be admissible in a white man's court or not.

The testimony of the witnesses for the defendants is confined almost entirely to evidence tending to show the presence of Osage blood in the Clem family, and it does not rebut the evidence of the nation that the enrollment was procured by means of fraud. As it is apparent that even though the defendants as a matter of fact had no Osage blood, provided no fraud was committed in procuring their enrollment as members of the Osage tribe, the Office is of the opinion that such testimony is irrelevant, as they would not come within the purview of the act authorizing this investigation.

It is admitted on behalf of the defendants that Big Heart was paid $300 to assist them in getting on the Osage rolls. Witness Pettit testifies that he was promised $500 if he would not testify as to what he knew in regard to the case at the hearing before the Commission in 1896; that of this amount he actually received $10. White Hair's admission to Mosier, Pettit, and Rogers as testified to by them, of the Clems offer to him of $50 quarterly for his aid in getting them on the rolls, and the actual receipt by Mosier of $30 from Mrs. Clem, to be paid by White Hair; the testimony of Big Heart that he was given $400, $200 of which was for himself and $200 to be distributed to members of the council who would vote for the enrollment of the Clems; the testimony of Saucy Calf that he received $20 from Big Heart after the enrollment of the Clems; that he was requested by Big Heart to vote in their favor and did so, even though the money was not promised to him until after the voting was done; the testimony of Keeler that the Clems borrowed $3,000 from him at about the time of the prior hearing, all constitute such a chain of circumstantial and direct evidence as tends to sustain the correctness of the findings of Commissioners McChesney and Black Dog that fraud was used to secure the enrollment of the Clems.

Another important feature of the case is shown by the testimony of Frank Revelette, which, while standing uncorroborated by evidence in this case, is corroborated by the testimony of Joseph Revard in the case of the Osage Nation *v.* The Javine Family, and inclines the Office to the opinion that the Susan Larine from whom the defendants claim descent is not the Susan Larine mentioned in the treaty of 1825. And if this is a fact it would in a great measure harmonize the otherwise conflicting testimony offered at this and the former hearing relative to the residence, relationship, and time of death of the Susan Larine mentioned in the treaty and would corroborate the ex parte affidavits of Rev. Amasa Jones and George Requa, considered by the Department at the former hearing, but, being ex parte affidavits, were not given weight when opposed to the positive testimony of the defendants.

The Office believes the Commission rightly held that sufficient newly discovered evidence had been adduced to warrant a reopening of the case and that fraud was practiced by the contestees in procuring their enrollment by presenting false testimony in support of their application, and the presumption raised by the evidence of the nation showing this fraud is not rebutted by the evidence of the contestees. Therefore the Office recommends that the findings of Commissioner McChesney be

approved and the contestees above named be stricken from the rolls of the Osage Nation, and all the rights, benefits, and emoluments which may have accrued to them as members of the Osage tribe of Indians revert to the nation.

Very respectfully,

C. F. LARRABEE, *Acting Commissioner.*

Approved July 25, 1907.

——— ———, *Acting Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, November 6, 1907.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: Under date of July 23, 1907, your office transmitted the record in the contested enrollment case of Osage Nation *v.* Mary J. Clem et al., the contestees being commonly known as the Clem family.

The case arises under the proviso to section 1 of the act of June 28, 1906 (34 Stat., 539), which provides—

"* * * That the principal chief of the Osages shall, within three months from and after the approval of this act, file with the Secretary of the Interior a list of names which the tribe claims were placed upon the roll by fraud, but no name shall be included in said list of any person or his descendants that was placed on said roll prior to the thirty-first day of December, eighteen hundred and eighty-one, the date of the adoption of the Osage constitution, and the Secretary of the Interior, as early as practicable, shall carefully investigate such cases and shall determine which of said persons, if any, are entitled to enrollment; but the tribe must affirmatively show what names have been placed upon said roll by fraud; but where the rights of persons to enrollment to the Osage roll have been investigated by the Interior Department and it has been determined by the Secretary of the Interior that such persons were entitled to enrollment, their names shall not be stricken from the roll for fraud except upon newly discovered evidence; and the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him, after investigation, to be so entitled, whose applications were pending on the date of the approval of this act; and the said Secretary of the Interior is hereby authorized to strike from the said roll the names of persons or their descendants which he finds were placed thereon by or through fraud, and the said roll as above provided, after the revision and approval of the Secretary of the Interior, as herein provided, shall constitute the approved roll of said tribe; * * *"

The Clem family was admitted to membership in the Osage Nation by action of the Osage national council in 1889. An investigation was had in 1896 with respect to the claims of this family, that investigation being on the charge that its members have no Osage blood. It was finally found by the Department that the nation "failed to prove the charge that these parties have no Osage blood." There was no charge that they secured enrollment through bribery and fraud, but testimony was nevertheless taken to prove it. The Department found that the evidence also failed to sustain that charge. It was accordingly held that "these parties should not be deprived of their Osage rights," and that they should be retained upon the rolls of the tribe.

This case is therefore one where, under the terms of the act of June 28, 1906, an investigation prior thereto had been had by the Department and it had been determined that these parties were entitled to enrollment, and consequently it is a case "where their names shall not be stricken from the roll for fraud except upon newly discovered evidence." The question involved, therefore, goes both to the sufficiency and admissibility of the evidence now introduced by the Osage tribe. The burden is upon the latter under the terms of the act to affirmatively show that the names of these parties were placed upon the Osage roll by fraud.

In accordance with the act, the Osage Nation lodged with the Osage allotting commission, selected under the provisions of said act, complaint against these parties, to the effect that they are not of Osage blood; that they obtained membership in the tribe through fraud and corruption—that is to say, by bribery of witnesses at the time they applied for such membership and by bribing members of the Osage national council. The commission and your office find that sufficient newly discovered evidence has been adduced by the nation on these charges to warrant a reopening of the case; that fraud is shown to have been pacticed by these people in procuring enrollment, and therefore recommend that their names be stricken from the rolls of the Osage tribe. The briefs and abstracts of testimony originally submitted here with the record have been supplemented by oral statements and arguments on behalf of both parties to this controversy.

By the express and unambiguous terms of the act of June 28, 1906, the names of persons whose rights to enrollment had theretofore been investigated and it had been determined that such persons were entitled to enrollment, are not to be stricken from the rolls "for fraud except upon newly discovered evidence." The rights of these contestees having been investigated and adjudicated upon evidence going directly to the question of Osage blood, they must be regarded under such adjudication as of Osage descent and thus entitled to enrollment. The question of fraud now raised against them therefore goes merely to the method employed in procuring enrollment, and must be judged rather in the light of improper means to attain recognition of rights to which they otherwise or in any event would be entitled. A different question would be presented had the right to enrollment by reason of Osage blood not previously been adjudicated, or were there such newly discovered evidence now offered as would overcome the previous record in that respect. Besides, the prior adjudication went not only to the charge of no Osage blood but to the question of bribery as well.

Contention is made on behalf of the Nation for what is termed a liberal construction of the act of 1906 as applied to the words "newly discovered evidence" used therein; that is, that such words should be interpreted to mean any evidence which has not heretofore been formally considered and passed upon by the Department, both as to the question of Osage blood and that of bribery. This would result in trying the case de novo. While in the administration of Indian affairs, in order to insure fairness and justice to all concerned, the Department usually exercises a broad discretion and may and does ordinarily take advantage of everything disclosed by a record, yet in the act of 1906 clear and explicit directions are given as to just what shall be required in the way of evidence to justify striking from the rolls the names of persons whose rights had previously been investigated and who were found by the Department to be entitled to enrollment. These contestees are just as much entitled to the guardian care of the Government as is the tribe itself, especially since Congress has thrown around them the protective provisions contained in the act of 1906. The direction is that their names shall not be stricken from the rolls for fraud except "upon newly discovered evidence." In the absence of any contrary indication it must be assumed that Congress intended that these words should be construed in accordance with their legal meaning. In other words, the rules and well established principles governing new trials are applicable here. It becomes a serious question therefore whether the liberal construction claimed for the act would not result in an injustice to these contestees and disturb those rights and conditions which the Congress intended should not be disturbed, thus defeating in this respect the very purpose of the act which itself prescribes the character of the evidence the tribe must adduce in order to have the names of said contestees stricken from the rolls.

In the foregoing view the only questions that can properly be considered as affecting the rights gained by the enrollment of these contestees are as to whether fraud was practiced in procuring such enrollment and whether sufficient newly discovered evidence was adduced at the hearing before the present allotting commission to warrant striking their names from the rolls of the tribe.

It is not deemed necessary here to critically analyze the testimony of the various witnesses who testified at the hearing before the Osage allotting commission. It is sufficient to state that much of it is hearsay; several of the witnesses on behalf of the nation testified before the commission of 1896, and much of the testimony conflicts with that offered before that commission. The nation relies principally to prove the bribery charge upon the testimony of two witnesses, one of whom was a member of the Osage national council at the time the members of the Clem family were admitted to the rolls, and who testified that he received a sum of money for voting for the enrollment of said family, but that it was given to him after his vote was cast. The other witness testified that he was asked by and assisted the Clem family in getting on the rolls; that he was given a sum of money for his own use to act as interpreter, as well as another sum with which to pay members of the council for voting for the admission of said family to the rolls; that he was principal chief of the tribe at the time of the 1896 investigation and was largely instrumental in bringing about such investigation. He, however, did not testify at the hearing in 1896, but only after a lapse of seventeen years does he break his silence with reference to what he knows of the alleged method employed by this family in gaining admission to the rolls of the tribe. The two witnesses mentioned contradict each other on a material point. If the moneys were in fact paid as claimed and for the purpose claimed, then these witnesses are self-confessed bribe takers, and their testimony should be weighed accordingly. Their testimony remains practically uncorroborated except by hearsay.

The evidence, taken as a whole, is of such a character that while it might be presumed therefrom that fraud was perpetrated in procuring the enrollment of these people, yet it

is not sufficiently clear, direct, and convincing upon which to fairly predicate a finding that fraud was actually perpetrated. It is a well-established principle that fraud can not be presumed, but must be shown by unequivocal evidence. Giving due weight to all the evidence adduced before the allotting commission, and this might fairly include that in reference to the question of Osage blood as well as bribery, it is not believed a sufficient showing has been made to justify the important action of striking the names of these people from the Osage rolls.

Other questions are presented on behalf of the nation, one being as to the power of the council under the Osage constitution of 1881 to enroll this family at all. It is believed, however, that at this date and under the provisions of the act of 1906 the determination of this case is limited mainly to the question whether the enrollment of these people was procured through fraudulent means.

The recommendation of your office is accordingly disapproved, the contest herein will be dismissed, and the names of this family retained on the rolls of the Osage tribe.

The papers are herewith.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

Now, with respect to Herrard and his wife, one of the applicants here, he is seeking citizenship by virtue of an alleged adoption by the tribe in 1874, which adoption is denied. Clavier is in the same class with Herrard, and so is Planondom. The agent and the council never have been submitted evidence of even their original adoption. The fact with regard to Herrard is this: Herrard is a white man, and not an Indian by blood at all. He for many years occupied and possessed 50,000 or 60,000 acres of land in the Osage Nation without right, pasturing from 3,000 to 10,000 cattle there, and I am advised that he is to-day worth, or considered to be worth, between half a million and a million dollars. He has not been upon the reservation, as I am advised, for some considerable time, and yet you are asked to put him upon the rolls for the reason that he was originally put there in 1874 by the Indian agent and knocked off along about 1878 by request of the nation. This decision that I have cited of the Supreme Court of the United States in the case of Roff *v.* Burney, states that the nation had the right to do that very thing. Also, it is stated here by the attorneys for the applicants that Mrs. Appleby ought to be on the rolls, that her tertimony is entitled to strong weight and credence, and yet when we come to examine her testimony with relation to the Revards, Mrs. Appleby states that certain persons claiming as Revards she did not know as Osages; they were not known as Osages. Long years back apparently there had been Revards who were Osages, and there were Revards whom she did not consider to be Osages. She is one of the persons who are now seeking enrollment.

At this point I would like the committee to hear a statement from Mr. Trumbley.

Senator CURTIS. Have you finished your statement?

Mr. MERILLAT. I have finished, except possibly with reference to some specific person. In the time that I have had I could not go through the record in the Department of each person, and, what is more, I understand from the manner of the opening statement that there will be other opening statements made here that I have never had any opportunity to reply to at all; in other words, that you do not fully open as you do in the court, so that the defendant would have a chance to answer.

The CHAIRMAN. That was not the understanding of the chairman, anyway. I understood the case was completely presented on the part of the complainant the other day.

Mr. MERILLAT. I take it from the way that certain matters had been put in that they expect to go into certain other matters in conclusion.

Senator CURTIS. I understood that they would maybe have some little thing that they wanted to put in; an affidavit or a report that would not involve any dispute.

Mr. LEAHEY. I will state that I have a few copies of letters covering the authority given to the Secretary that I desire to offer in the record and to state briefly what they are.

Mr. HEMPHILL. I would like to make a short statement about the Hunts.

Senator CURTIS. I think Mr. Trumbley and other persons representing the Osages should be heard, but I do not think they should be heard during your argument. I think you should finish your argument first.

Mr. MERILLAT. I simply desire to say one or two things in relation to one or two matters. For example, with relation to the right of the Aulds, who were Kaws and were born Kaws, it is our position that if those Auld children, because they were Indian children, should have been provided for at all, they should have been provided for out of the $155,000 appropriated in the Indian appropriation bill of March 3, 1905, for the benefit of the Kaws. We do not think that they ought to be entitled to a share in the land and the funds of the Osages. With reference to some of the decisions that the Department has rendered, those decisions, I think, as a rule, at any rate, will be found conform——

Senator CURTIS. With regard to the Auld case, when we considered that we only considered the blood of the father and virtually admitted that there was Osage blood on the father's side, who was a Kaw, and never considered the blood of the mother, Mrs. Auld. I have a letter from the Department in which they only refer to the blood of the father, who was a Kaw.

Mr. MERILLAT. But, if I had time I would introduce into the record specific decisions of the Assistant Attorney-General in relation to the Five Tribes and others where he held that if a person is born outside of the tribe at the time of birth he does not occupy a tribal relationship or have right to citizenship.

Senator CURTIS. I think you have made that statement once.

Mr. MERILLAT. Now, with relation to some of the other persons, the Helderbrands, a woman who was put on the rolls: That woman was put on the rolls by the Secretary of the Interior in conformity with his other decisions. She was an Osage; she had not removed her effects. She may have gone outside the nation for a time, but she was not in the same position as one who had removed. He put her on in substantial conformity with the Yeargain decision in the Cherokee Nation, and so I think you will find that throughout that there are some cases that you can very readily distinguish by applying to them the principles announced with relation to the Five Civilized Tribes in other opinions of the Assistant Attorney-General.

Senator CURTIS. Did you refer to the Callahan case?

Mr. MERILLAT. I did not cover the Callahan case. As to the Cal-
ı case I am under this embarrassment. We represented Pearl
ıan. We did everything we could in behalf of Pearl Callahan.
vercame before the Commissioner of Indian Affairs an adverse

decision by Assistant Secretary Ryan. We went before the Secretary of the Interior then and did what we could to sustain the Commissioner. The Secretary finally said that this child was undoubtedly an Indian child. He was not ready to admit, he said, that she was an Osage Indian child, and, so far as concerned legal principles, the fact is that she was born outside the Osage Reservation. The mother had left the Osage Reservation and had married and was in wedlock with a white man when Pearl was born. We most earnestly strove for Pearl Callahan's admission, but there come times when things that have been fully passed on, on which one has been heard to the uttermost, as we were heard to the uttermost, must be considered as settled. After all you have got to have a final tribunal, and when that final tribunal passes on the matter, not only upon an appeal, but upon a motion for review, and it hears you throughout, whether you are right or wrong it has to be treated as a finality.

The decision finally was that they would not enroll her. We did everything that could be done, and I believe that there will be no question that we have not. Ultimately we were asked to come here in behalf of Pearl Callahan, and possibly in some of these other cases, and we made this response, that we were attorneys for the Osage Nation in one matter, the Vann & Adair claim for $180,000 against the nation, and were seeking other attorneyships from the Osages, namely, an attorneyship to represent the nation generally and also to prosecute their civilization-fund claim against the United States for some hundreds of thousands of dollars, and we would not enter upon any case that might involve our opposing the Osages in some matters and favoring them in others.

PEARL CALLAHAN.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, January 9, 1907.

The SECRETARY OF THE INTERIOR.

SIR: The Commissioner of Indian Affairs having asked instructions relative to the application of Mrs. Amanda Callahan (now Mrs. Amanda Gussman), a white women, for the enrollment of her daughter, Pearl Callahan, with the Osage tribe of Indians, the matter has been referred to me for opinion.

Pearl Callahan is alleged to be the illegitimate child of said Amanda Callahan and She She, an enrolled member of the Osage tribe of Indians. A similar application was submitted to the Department by the Indian Office in 1901, at which time evidence was furnished, including statements by the mother and affidavits by She She, in which he acknowledged Pearl Callahan to be his child and wherein he stated, among other things, that he had offered to take the child and care for her provided the mother would give her over to him. With the papers also was the following resolution:

"We, the undersigned chiefs and headmen of the Osage tribe of Indians, having heard what the agent had to say about the enrollment of Pearl Callahan, said to be the child of She She, a member of our tribe, are opposed to the enrollment of said child, it being a bastard, as we are opposed to the enrollment of all bastard children. Had Mrs. Callahan continued to live with She She, we would have no objection to the enrollment of her child."

The Department at that time declined to approve the application for the enrollment of this child, as follows:

"I have fully considered the statements set forth by you in her behalf, and have also given further consideration to the evidence before the Department in the case, and have concluded that it would not only be against public policy to admit the applicant to the rolls of the Osage Nation, but also in contravention of the rights of the nation to require it, without its consent, in fact, against its protest, to admit the child to communal interest in the lands, moneys, and other property of the tribe.

"Furthermore, the applicant seems to have been born in wedlock several months after the marriage and cohabitation of the mother with another than the alleged father,

with whom there was no pretense of a tribal or other marriage of any sort, nor of any other than an unlawful, immoral, and clandestine relationship."

The applicant herein, alleged mother of this child by the Indian She She, subsequently married a white man by the name of Callahan, but they soon separated. It appears that She She offered to marry her or to take the child and care for it, but the mother was unwilling to agree to either proposition. The latter has almost from the date of the birth of her daughter been residing in Kansas City, Kans., employed in the factories there. She is now married to and living with a man by the name of Gussman, and her daughter attends school in that city.

The present application for the enrollment of Pearl Callahan with the Osages is practically a resubmission of the old one, the same papers going to make up the record, in view apparently of the provisions of the act of Congress passed June 28, 1906 (34 Stat., 539). That act provides in section 1 that the roll of the Osage tribe of Indians shall consist, among others, of "all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January 1, 1906," and such roll is thereby declared "to be the roll of said tribe, and to constitute the legal membership thereof." The name of She She is on the roll of January 1, 1906, and he has acknowledged Pearl Callahan to be his child. The Osages in council opposed her enrollment, but stated that if the mother had continued to live with She She they would have had no objection to the enrollment of the child. This suggests whether the act of June 28, 1906, makes mandatory the enrollment of all children born to members of the tribe whose names were on the roll January 1, 1906, including illegitimate children who have never been recognized by the tribe nor affiliated therewith. The evidence here shows that Pearl Callahan has always remained in the custody of her mother, and has been nurtured as a member of the white community. Soon after her birth she was removed by her mother from the reservation to Kansas City, Kans., where she has remained ever since. She She's offer to care for and support the child was on the condition that the mother surrender it to him. This would have resulted, in case of the enrollment of the child, in giving She She control of its lands and funds, on the theory that upon surrender or abandonment by the mother the lawful custody of an illegitimate child belongs to the putative father. But the mother declined either to live with She She or on the reservation, and has declined to surrender her child into the custody of the father. The acknowledgement by She She of the paternity of this child certainly, properly, and naturally casts upon him personal obligations for its education and support, but it is not believed that such scope was contemplated by the act of June 28, 1906, as to permit illegitimate children who never lived with nor were recognized by nor affiliated in the Osage tribe to participate in the division of the communal lands and funds of the tribe. My opinion, therefore, is that this application should be denied.

The papers are herewith.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved, January 9, 1907.

E. A. HITCHCOCK, *Secretary.*

There is one other case of illegitimacy, that of Ola Martin. This was a case where a woman, from all the testimony, was a woman of absolutely loose character. She was mixing promiscuously with both Indians and white men, and she finally had a child. There was no evidence at all that that child was the child of any Osage, and, what is more, I am advised by the Indians that she does not resemble an Indian child. I have no personal knowledge about that.

There has been the most abundant opportunity for a determination of all these cases, and we think that the matter should be considered as settled, the parties having had their day in court. There is no lawyer who does not sometimes disagree with the court; we all do that; but nevertheless when the final tribunal passes upon it, it becomes and is usually treated as final. In some courts you are compelled, of course, to accept the result, and while Congress undoubtedly exercises an authority, and may have even in this instance the authority to open up the rolls again, at the same time the Osages think that this matter should be considered thoroughly settled, and the legislation and the action that has been taken should be treated as final.

With reference to the Revards and the Crumps, on their own showing they are claiming because a grandfather was a quarter-blood Osage and grandmother white. The applicants' father was born in Missouri in 1828, lived near Kansas City until 1858, and then moved to California, where they have lived ever since, and intend to live, they state, unless enrolled and given Osage lands and money. On this point the pending bill would seem to contemplate they might get their share wholly in money. There is doubt on the part of the Secretary as to their Indian ancestry. They seek to secure enrollment in part because a sister who came to the Osage Reservation in 1888 was enrolled by the council. She, it is admitted, paid councilmen money. The only dispute is whether it was as a bribe. The statement above made applies also to the Strattons, Hunts, Loveland, and McCrarys. The decision that these persons should not be enrolled is supported by abundant precedent. They never were on the rolls, and hence are easily distinguished from Mrs. Holderbrand, who was on the rolls and left the reservation to educate her children, and Coaira Margrain, who went forth as a sister of charity. Both were held not to have forfeited existing rights.

The Poppans and Fronkiers are Kaws, affiliated with that tribe, and were rightfully denied Osage enrollment. I have not had time to examine closely these cases and those of the adults.

STATEMENT OF J. B. TRUMBLEY.

J. B. TRUMBLEY was duly sworn by the chairman and testified as follows:

The CHAIRMAN. What is your name?

Mr. TRUMBLEY. J. B. Trumbley.

The CHAIRMAN. What is your age?

Mr. TRUMBLEY. Fifty-five.

The CHAIRMAN. What is your occupation?

Mr. TRUMBLEY. I am a farmer; I am also a member of the council.

The CHAIRMAN. You are a member of the council of the Osage Indians?

Mr. TRUMBLEY. Yes, sir.

The CHAIRMAN. Proceed and make such statement as you wish.

Mr. MERILLAT. Mr. Chairman, may I ask Mr. Trumbley a few questions?

The CHAIRMAN. Yes.

Mr. MERILLAT. Mr. Trumbley, it has been stated that the Osage council, when applications for enrollment came before it, would simply say, "We do not want to make any more Osages" and reject the applications. Please state what the Osage council would do and what was its custom when any application came before it for enrollment.

Mr. TRUMBLEY. Well, they considered everything very thoroughly—that is, they took their time considering a case and talked over the matter a day or two, and then the older people would talk together—that is, men from 60 to 70 years of age—to see if they knew any of these people; whether they had had any kinfolk or not. Of course if they could not find that they were Osages, they rejected them. Sometimes there would be affidavits that we thought were false affidavits, but they would consider and look at those affidavits

and see if they could find something that would rebut them. I think we considered them all very well in the council.

Mr. MERILLAT. Do you know Joe Herrard, otherwise known as Virgil Herrard?

Mr. TRUMBLEY. Yes, sir.

Mr. MERILLAT. What is he, a white man or an Indian?

Mr. TRUMBLEY. He is a white man.

Mr. MERILLAT. What was he doing on the reservation?

Mr. TRUMBLEY. He is married to an Osage woman, I think. I have known him since 1870, when he first came down to that country.

Mr. MERILLAT. How many acres of Osage land did he occupy?

Mr. TRUMBLEY. He got to be an extensive cattle raiser there in the early days; that is, in the latter part of the seventies and the fore part of the eighties—ten years. I think he handled a good many cattle in the northeastern part of the reservation and controlled maybe 50,000 acres.

Mr. MERILLAT. How many head of cattle did he have on this ranch?

Mr. TRUMBLEY. Well, he had a good many cattle; I should say maybe three or four or five thousand.

Mr. MERILLAT. Do you know whether he is accused of being rich; and if so, how much is he worth?

Mr. TRUMBLEY. I could not tell you that. He has always been looked upon as a pretty wealthy man.

Mr. MERILLAT. It has been stated that Mrs. Appleby was given an annuity because she was poor. What do you know of Mrs. Appleby, whether she is a woman of means or not?

Mr. TRUMBLEY. Well, I have always heard that she was well off—well fixed.

Mr. MERILLAT. Did you ever hear how much, or about how much, she is worth?

Mr. TRUMBLEY. I have heard from different parties that maybe she is worth from fifty to seventy-five or a hundred thousand dollars.

Mr. MERILLAT. Of what Osage family are you a member?

Mr. TRUMBLEY. The Whitehair family.

Mr. MERILLAT. State whether or not you ever heard of the Clems as being members of the Whitehair family or connected with it.

Mr. TRUMBLEY. I never heard that until this last investigation. I think probably they had some affidavits from parties claiming that they believed that they belonged to the Whitehair family.

Mr. MERILLAT. Among the members of the Whitehair family what are the persons of apparently partly white blood who are of the Whitehair family, as far as you know?

Mr. TRUMBLEY. I am supposed to come from the Whitehair family, the Cypian Tayrian family, and the Canvilles and the Trumbleys.

Mr. MERILLAT. You are partly white blood, are you not?

Mr. TRUMBLEY. Yes, sir; three-fourths.

Mr. MERILLAT. Aside from your own family, is there any other Whitehair family having white blood?

Mr. TRUMBLEY. The Boulangers, who claim kinship with us; I do not know exactly what relation they are. The closest relation is the Cyprian Tayrian family.

Mr. MERILLAT. Did the Osages know prior to its passage of the change that was made in the act of 1906 regarding newly discovered *evidence?*

Mr. TRUMBLEY. I do not know hardly whether we did or not.

Mr. MERILLAT. Did you know anything about it before it became a law; that is, that change?

Mr. TRUMBLEY. I do not think I did.

Mr. MERILLAT. Where were you at the time this act was under consideration?

Mr. TRUMBLEY. I was around Pawhuska, but I was not a member of that committee that formulated the bill.

Mr. MERILLAT. Was you up here at the time that act was under consideration, or that bill?

Mr. TRUMBLEY. A part of the time I believe, a little while.

Mr. MERILLAT. Was there any effort made to amend that bill and get on special persons?

Mr. TRUMBLEY. I do not understand you.

Mr. MERILLAT. Was there any effort made, so far as you know, and by whom, on Herrard and Clavier and others?

Mr. TRUMBLEY. Major Miles was present one day when I was talking to Senator Curtis and tried to get inserted a clause to enroll Joe Herrard and Clavier, and I, think, Plomondon and a few others of them, and I think he told Senator Curtis he wanted to insert a clause in that bill to have those parties put on.

Senator CURTIS. Who wanted to insert a clause?

Mr. TRUMBLEY. Major Miles, I think you will remember, Senator.

Senator CURTIS. It was not inserted, was it?

Mr. TRUMBLEY. No, sir; of course it was not inserted. I objected to it myself; we did not want it; but he tried to get it—Major Miles.

Senator CURTIS. I want to ask you if you know Beatrice Houston—you know the Houston family?

Mr. TRUMBLEY. Yes, sir; I believe I do.

Senator CURTIS. You know an Osage woman who married Joe Pappan?

Mr. TRUMBLEY. Yes, sir; I believe I do. She is a sister of Wes Dial's wife, I think.

Senator CURTIS. Yes.

Mr. TRUMBLEY. I think so.

Senator CURTIS. She was an Osage, was she not?

Mr. TRUMBLEY. I do not remember; it seems like that in the early days she was——

Senator CURTIS. There was never any question, was there, in the Osage tribe that Justin Pappan married a white woman who is on the Osage roll, who is an Osage woman, and took her to the Kaw Reservation to live, which is right across the line from the Osage Reservation?

Mr. TRUMBLEY. I do not understand you exactly.

Senator CURTIS. You know Joe Pappan, a Kaw Indian; he was one of the leading members of the Kaw tribe of Indians?

Mr. TRUMBLEY. I do not know them much; I know Henry Pappan and Billy.

Senator CURTIS. Henry was a brother of Joe's?

Mr. TRUMBLEY. Yes, sir; Henry was the only one I knew, and Aikin Pappan.

Senator CURTIS. Aikin Pappan was a distant relative of Joe's. You say you do not remember this Houston woman?

Mr. TRUMBLEY. I think I do; it seems like I knew her in the early days there.

Senator CURTIS. She died many years ago—that is, Beatrice?
Mr. TRUMBLEY. Yes, sir.
Senator CURTIS. She went over to the Kaws, did she not?
Mr. TRUMBLEY. Yes.
Senator CURTIS. I want to know if you know how much Osage blood she had.
Mr. Trumbley. I do not know.
Senator CURTIS. You know that she was an Osage, do you not?
Mr. TRUMBLEY. I think she was considered an Osage.
Senator CURTIS. How much of an Osage is her sister considered, this lady you have just mentioned?
Mr. TRUMBLEY. I could not tell you.
Senator CURTIS. You know her; how much Osage blood does she seem to have from looking at her?
Mr. TRUMBLEY. I could not tell you at all.
Senator CURTIS. She is recognized as an Osage, is she not?
Mr. TRUMBLEY. I think she is.
Senator CURTIS. She is on the rolls?
Mr. TRUMBLEY. Yes, sir; she is on the rolls.
Senator CURTIS. And her children are on the rolls?
Mr. TRUMBLEY. Yes, sir.
Mr. LEAHEY. I want to ask you a question. There is one matter that the council tried to bring out in contradiction of the statement I made the other day. The question is this: You say that the council considers applications that are brought before it and hunts up parties to ascertain whether or not the applicants are Osages, and if they find that they are Osages they accept them, and if they find they are not Osages they reject them. I want to ask you if they find that they are Osages—that is, that if they find that they have Osage blood—is it the custom of the council to admit them?
Mr. TRUMBLEY. Well, as to these Strattons, of course we went over that matter carefully, and I think we rejected them on the ground that they never affiliated—that is, those Strattons never affiliated.
Mr. LEAHEY. But they were considered to be Osages, were they not, by the council?
Mr. TRUMBLEY. It seems like the evidence showed it, but then there was no newly discovered evidence. It seemed like in the Stratton case they wanted new evidence, and the last time they were before the council there was no new evidence.
Mr. LEAHEY. In the Stratton case does it not show that they were related to Augustus Stratton, commonly called Brown?
Mr. TRUMBLEY. I think they go back to the Browns.
Mr. LEAHEY. All those are Osages, are they not?
Mr. TRUMBLEY. Yes, sir; the Browns are Osages, but one reason the Osage council did not admit them was because they had never affiliated and never tried to get on the rolls.
Mr. LEAHEY. Because they lived away from the tribe?
Mr. TRUMBLEY. Yes, sir.
Mr. LEAHEY. And the same is true with reference to the Revards?
Mr. TRUMBLEY. I think so. I do not know what Revards they are.
Mr. LEAHEY. You know Uncle Louis Revard, or did you not in his lifetime? He was an Osage, was he not?
Mr. TRUMBLEY. I do not know as to that.
Mr. LEAHEY. He was on the roll, was he not?

Mr. TRUMBLEY. That case was before the council, I think, when I was secretary of the council in the early nineties; but the council rejected it and laid it aside. I can not remember whether that passed at that time or not.

Mr. LEAHEY. Was he not on the roll and recognized as a member of the tribe after his application was received?

The CHAIRMAN. Does not the roll show?

Mr. LEAHEY. Yes, sir.

The CHAIRMAN. Then I do not think we need take up any time with that.

Mr. LEAHEY. He is the father of these applicants; that is the reason I asked these questions.

The witness was thereupon excused.

Mr. MERILLAT. We desire to ask the agent a few questions, if the committee deem proper.

The CHAIRMAN. Very well.

STATEMENT OF RET MILLARD.

Mr. MILLARD, having been duly sworn by the chairman, testified as follows:

The CHAIRMAN. What is your age?

Mr. MILLARD. Forty-six.

The CHAIRMAN. What is your occupation?

Mr. MILLARD. I am an Indian agent of the Osages.

Mr. MERILLAT. For how long a time have you been with the Osages, and in what capacities?

Mr. MILLARD. About four years as leasing clerk and United States Indian agent.

Mr. MERILLAT. Have you any knowledge as to what, if anything, is done by the council when applications for membership come before it for enrollment?

Mr. MILLARD. I have.

Mr. MERILLAT. Please state what is done.

Mr. MILLARD. I was there during the trial of all these cases. When we got the papers there we notified every person; every paper was submitted and read by an interpreter to the council, and all evidence was submitted both pro and con in the cases.

Mr. MERILLAT. Please state whether or not the council made efforts to ascertain the facts in the cases.

Mr. MILLARD. They did. You will find a great many affidavits filed in those cases.

Mr. MERILLAT. The reason is given in each case by the Secretary in his report here. It is stated, however, that they would simply reject an applicant saying, "We do not want to make any more Osages." Is that correct?

Mr. MILLARD. I never heard that expression in the council in my life. I have heard it on the streets, but never in the council.

Mr. MERILLAT. Did the Osages have any means of ascertaining as to Osage blood, and that sort of thing?

Senator CURTIS. You mean other than the roll?

Mr. MILLARD. The same as any other person. Of course, because of their ignorance they are not as capable of finding out, but every

effort was made, and the attorneys were invited to submit any evidence they wished for or against.

Mr. MERILLAT. Full opportunity was given.

Mr. MILLARD. Yes, sir; I never saw a paper turned down that I know of.

Mr. MERILLAT. What is the position of the Osages with respect to those persons who possibly may, or probably may, have had some Osage blood, but were not born within the nation and did not live within the nation?

Mr. MILLARD. The Osages were almost unanimously against anyone who applied on the grounds of affiliation.

Senator CURTIS. You mean a lack of affiliation?

Mr. MILLARD. Yes; I mean for want of affiliation.

Mr. MERILLAT. What do you know, if anything, with respect to the pending cases, as to whether these 37 or 39 were all of the cases that were pending or are pending?

Mr. MILLARD. When these cases were tried before the council about 123 other cases were tried at the same time.

Mr. MERILLAT. Have you any knowledge whatever as to whether there are many persons outside of the Osage Nation who probably have some degree or quantum of Osage blood?

Mr. MILLARD. It is generally conceded that thousands of people in the southwestern country—southeastern Kansas and southwestern Missouri—claim Osage blood, but there has never been any proof of that kind submitted.

Mr. MERILLAT. That is all.

Mr. MILLARD. Senator Curtis, may I ask you a question with regard to Mrs. Houston?

Senator CURTIS. Certainly.

Mr. MILLARD. I think you asked the question if she was an Osage?

Senator CURTIS. Yes.

Mr. MILLARD. Is it a question of whether Isabella Auld is her daughter?

Senator CURTIS. Yes.

Mr. MILLARD. She was enrolled as a Kaw, the mother of the children.

Senator CURTIS. That was because her mother died and her father died and her grandmother kept her and enrolled her as a Kaw. I know all about the case from start to finish. I would like to ask the agent one question. Out of those 123 cases that were considered, other than these here, is it admitted by the Department that they were of part Osage blood?

Mr. MILLARD. I think not. It might have been in a few cases, but not very many, if any.

Senator CURTIS. I think that the Department admits that nearly all of these applicants, these 37, did have Osage blood or are of Osage blood.

Mr. MILLARD. Well, you will find that in their letter to you.

Senator CURTIS. I know; we have that. I want to know about the other 123.

Mr. MILLARD. I do not think, probably, that any of those 123, or many, any way, have Osage blood.

ator CURTIS. That is, that the Department does not admit that ave?

Mr. MILLARD. No, sir.

Senator CURTIS. I think that they admit as to part of those 37 or 39 that they have part Osage blood.

Mr. MILLARD. Yes, sir; I can find it out for you.

Senator CURTIS. It is not necessary.

Mr. MERILLAT. I think the fact is that they admit that some are; and as to others, that they are doubtful.

The witness was thereupon excused.

Mr. HEMPHILL. Mr. Chairman and gentlemen, I represent in conjunction with Mr. Leahey, the Hunts and Pearl Callahan.

The facts about the Hunt case are these——

The CHAIRMAN. Just one moment. There will have to be some understanding about this matter; either you will have to reply for all of them, or some one else. The committee can not have the same grounds gone over by the representatives of each of these families. Will not your statement cover all?

Mr. HEMPHILL. I do not know anything except about the Hunts and Pearl Callahan.

Senator CURTIS. Why could not the questions of law apply to all of these people, unless Mr. Leahey desires to make some further statement.

Mr. LEAHEY. Th re were some statements made by Mr. Merillat that are not correct and of which I have personal knowledge, because I have been in both of the investigations of the Osage tribe and have conducted one side of the case. I was also interested in the matter of getting just one clause in the allotment bill, which provides that those cases which had been previously investigated by the Secretary should not be reinvestigated except upon newly discovered evidence of fraud.

The CHAIRMAN. What portion of this case do you desire to address yourself to?

Mr. LEAHEY. I have some papers which I wish to file and also to make a few remarks about, and then I desire to make answer to some [illegible]ents that were made by Mr. Merillat with reference to the [illegible] of fraud that was raised. I desire also to address myself [illegible]position that matters that come from the Five Civilized [illegible] not be parallel to the question raised as coming from the [illegible] the reason that the Five Civilized Tribes were authorized [illegible] and law to [illegible] their own government and to control the [illegible]rnal affairs [illegible] right was not given to the Osages, [illegible]ere cont[illegible] departmental rule and by acts [illegible]

[illegible]ILL. Y[illegible] [illegible]eed, then, Mr. Leahey, and I w[illegible] [illegible]hat y[illegible] [illegible]s with reference to these two c[illegible]

[illegible]EAHEY.

[illegible]hal was sai[illegible] Mr. [illegible] allotme[illegible] that [illegible] [illegible]erest th[illegible] [illegible] [illegible]rting in [illegible] [illegible] [illegible]igated [illegible] [illegible] [illegible]iscovered [illegible] [illegible] the first serious [illegible]

was made by Congress to allot the Osages. I was here at that time, and I addressed the committee on the proposition of inserting in the bill such a clause. Senator Curtis was the chairman of the subcommittee that had the bill in charge at that time. I presented to the subcommittee this fact, that in 1896 we had been taking testimony for and against certain persons who were then on the Osage roll. The question had been fully gone into by a commission that had been appointed by the Secretary for that purpose. That commission had reported, together with its findings, to the Commissioner of Indian Affairs. The Commissioner of Indian Affairs had given his opinion, which had gone to the Secretary, and the Secretary had first confirmed the opinion of the Commissioner of Indian Affairs in a good many cases. The matter was subsequently referred to Judge Vandevanter.

The CHAIRMAN. I do not want to interrupt you, but I really can not see the force of this statement. That matter was presented to the committee, and the committee put it in, and the law was passed.

Mr. LEAHEY. Yes, sir; but a great deal of time was spent, and I did not know what effect the statement of Mr. Merillat had upon the committee. The fraud which counsel said had been admitted and the allegations of bribery which he said had been admitted never have been admitted. The fact is we have always hotly contested that anything whatever in the Clem case was paid to the members of the council with the knowledge of the parties who were enrolled. The evidence is very clear on the proposition that so far as was within the knowledge of the Clem people no money had been paid to any member of the council, nor was any money paid to anybody for the purpose of paying it to the council. They employed an interpreter who was not a member of the council and who was not an officer of the tribe by the name of James Big Heart, but who has since been prominent in the affairs of the tribe. Big Heart testified that he received certain money from them, and that money he divided up with the members of the council, giving some of it to the members of the council, but who, in fact, voted against those people. Aside from his testimony there is no testimony on that particular subject. The Clems deny that there was any intention that anybody should receive any money for the purposes of bribery.

Mr. HEMPHILL. And did not Big Heart in this investigation fail to make any statement of that kind?

Mr. LEAHEY. Yes, sir; and during this investigation of 1896 Big Heart, who had testified in the recent investigation on the question of fraud, and who was at that time chief of the tribe, and who assisted in the investigation, failed to make any statement as to any money paid to him for the purpose of bribery. So that, while it is claimed that there was bribery used, the Clems deny it and always have denied it.

Now, these cases that have been referred to have all been considered by the Secretary in two investigations. As was stated, in a former investigation the matter was fully gone into, and at the second investigation as to some of them in a limited way, so that there is nothing in this case to be brought out. As to the cases which have been considered by the Secretary with reference to enrollment, I have a few of his letters of authority where parties have been admitted to the roll, and I want to submit those to show that no definite line of

policy has been followed by the Department with reference to the enrollment of these people. In 1884 by telegram the Acting Commissioner of Indian Affairs authorized the enrollment of Maria Petit and her children and her grandchildren. The evidence was that in eighteen hundred and thirty something, Mary Petit had been taken away from the Osages, and up to this time, 1884, had lived among the Cherokees and had raised her children. She at that time came back and was enrolled under the authority of this telegram, a copy of which I hand to the reporter.

The telegram is as follows:

[Telegram.]

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., June 21, 1884.

To MILES,
Agent, Coffeyville, Kans.:

May enroll children and grandchildren of Maria Petit in compliance with treaty stipulations and Osage laws; filing with annuity rolls action of council signed by proper officers.

E. L. STEVENS,
Acting Commissioner.

That enrollment was also acquiesced in by the tribe. The enrollment of Albert Lombard, who had been separated from the tribe for some thirty years—more than thirty years—who returned from California with a family of 10 that he had raised out there, was made. That was in 1890. That was acquiesced in by the tribe and approved of by the Department. On October 23, 1890, by authority from John W. Noble, Secretary of the Interior, the Commissioner of Indian Affairs was directed to have placed on the rolls the name of Coaina Mongrain. In that letter the Secretary says:

It appears from the statement of Agent Miles, of the Osage Agency, Okla., that the applicant is known as a mixed-blood Osage, and you state that her brother and sister are enrolled as Osages and that she has no affiliation with any other tribe of Indians; that the Osage council refused to acknowledge her as a member of the Osage Nation of Indians unless she would return to the agency, which she declined to do. You recommend that authority be granted for the enrollment of the applicant as a member of the Osage Nation of Indians.

I ask that those communications be inserted in the record.

The papers referred to are as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 30, 1890.

LABAN J. MILES, Esq.,
United States Indian Agent, Osage Agency, Pawhuska, Okla.

SIR: Referring to your letter dated August 18, 1890, and previous correspondence relative to the application of Albert Lombard and his nine children, persons of mixed blood, for enrollment as members of the Osage tribe of Indians, there being inclosed with said letter a certified copy of a resolution of the Osage national council adopted December 23, 1889, admitting the applicants to tribal membership, etc., I have to say that I am in receipt of a letter from Mr. Lombard dated August 26, 1890, in which he states that his father, Robert Lombard, was a half-breed Osage borne on the rolls of the Osages from his birth to his death; that his (claimant's) mother is, according to his recollection and information, a quarter-blood Cherokee; that all of his relations on his father's side, yet alive, are still residing with and are members of the Osage Tribe, and that among them are the following-named persons, first cousins of the applicant, to wit: Thomas Rogers (ex-supreme judge), Antwoine Rogers, Mrs. Sophia

Davis, Joseph Lombard, and Alex. Marbin, and that the Osages have formally recognized himself and his family as entitled to all the rights and privileges of members of that tribe, etc.

The records of this office show that the name of Robert Lombard was borne on the rolls of the Osage Tribe in 1869, 1870, and 1875.

You are instructed to question the relatives above named of the applicants as to the family history of the claimants and their connection with and rights in the Osage tribe, and if you are satisfied therefrom as to the correctness of Mr. Lombard's statements, and that he is justly entitled to membership in the Osage tribe, and if you know that the Osage council has duly and in accordance with the Osage laws and customs admitted him and his children to tribal rights, you will, without further communication on the subject with this Office, enroll and provide for them as members of the tribe, entitled to participate in all annuities and benefits distributed after the date of their enrollment however hereunder, and will recognize them as having rights to land equal in every respect with other members of the tribe.

Very respectfully,

T. J. MORGAN, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
Washington, October 23, 1890.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: I acknowledge the receipt of your communication of 17th instant and inclosure relative to the application of Coaina Mongrain, a lady living at Osage Mission, Kans., a Sister of Charity, to be recognized as a member of the Osage Nation of Indians.

It appears from the statement of Agent Miles, of the Osage Agency, Okla., that the applicant is known as a mixed-blood Osage, and you state that her brother and sister are enrolled as Osages and that she has no affiliation with any other tribe of Indians; that the Osage council refused to acknowledge her as a member of the Osage Nation of Indians unless she would return to the agency, which she declined to do. You recommend that authority be granted for the enrollment of the applicant as a member of the Osage Nation of Indians.

In view of the facts and in accordance with your recommendation, authority is hereby granted for the enrollment of said Coaina Mongrain as a member of the Osage Nation of Indians.

The inclosure of your letter is herewith returned.

Very respectfully, JOHN W. NOBLE, *Secretary.*

Mr. MERILLAT. Was she not a Sister of Charity?

Mr. LEAHY. Yes, sir; and she refused to come back to the Osages and refused to live with them. Louis Revard, who is a brother of Peter Revard and Mary J. R. Clem, two of the applicants in this matter, on March 25, 1892, was enrolled after having been absent from the reservation a quarter of a century or more. The letter authorizing his enrollment I also desire to offer.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, March 25, 1892.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: I acknowledge the receipt of your communication of 24th instant in relation to the enrollment of Louis Revard as a member of the Osage Nation of Indians.

You state from the testimony filed in said claim that the applicant is of Osage blood and entitled to enrollment with the tribe in view of the action of the Osage council, dated March 26, 1891, admitting him to citizenship, he "having proven his right as such before the council of the Osage Nation."

In view of the action of the council and in accordance with your recommendation, authority is hereby granted for the enrollment of Mr. Louis Revard as a member of the Osage Nation, with rights equal to the other members thereof, to lands, annuities, and all tribal property.

The papers accompanying your communication are herewith returned.

Very respectfully,

JOHN W. NOBLE, *Secretary.*

Now, in line with the Callahan case, she being the illegitimate child of Sheshe, and so acknowledged to be by the Secretary of the Interior and the Commissioner of Indian Affairs, that enrollment was denied. I desire to read from a letter of October 5, 1906, to the United States Indian agent by C. F. Larrabee, Acting Commissioner, with reference to a child named Tall Chief, who is also an illegitimate child born to a white woman by a full-blood Indian, there being no marriage, and there has not yet been any marriage. In that case the Acting Commissioner says:

Relative to the application of Anna Elliot, a white woman, you say that her son, Enoch Tall Chief, was the result of unlawful intercourse with Eves Tall Chief, a full-blood member of the Osage tribe of Indians, who acknowledged the child as his, and that the council objects to the enrollment of the child on the ground of illegitimacy. With the sworn application of this woman, setting forth the parentage of the child, is an affidavit dated September 1, 1906, by Eves Tall Chief, the putative father, who says that he is "the father of Enoch Tall Chief, who was born on the 8th day of February, 1906, at Fairfax, Osage Indian Reservation." There is also submitted with the case an affidavit dated September 1, 1906, of Mrs. Lula Hines, who says that she attended Mrs. Anna Elliot as midwife February 8, 1906, and there was born to her a male child, which is now living.

It is clearly shown that Eves Tall Chief, a full-blood member of the Osage tribe and enrolled therewith as No. 333 on the tribal roll of January 1, 1906, is the father of the child, and that by his affidavit acknowledging it the child is entitled to enrollment under that part of the Osage act quoted in the foregoing case. It is therefore to be enrolled as a member of the Osage tribe thereunder, notwithstanding the protest of the tribal council.

This I also desire to offer.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 5, 1906.

UNITED STATES INDIAN AGENT,
Osage Agency, Pawhuska, Okla.

SIR: This Office is in receipt of your letter of the 19th ultimo, transmitting the applications for Osage enrollment of certain persons on behalf of their respective children, as follows:

Parent.	Child.	Born.
Charles Coleman	Joseph Coleman	Feb. 17,1906
Anna Elliot	Enoch Tall Chief	Feb. 8,1906
William Musgrove	Willis Ella Musgrove	June 8,1906
Mrs. Ida Barber	Augustus Barber	July 15,1906
Eugene Perrier	Ray L. D. Perrier	June 18,1906
John B. Moncravie	Anna Anita Moncravie	June 19,1906

You say that these applications were presented to the Osage business committee, which, at its meeting held September 4, 1906, rejected all of them; and ask instructions therein.

These cases are considered seriatim, and you are informed as follows concerning them:

You report that Charles Coleman, white, was legally married January 29, 1906, to Mary Cheshewalla, a full-blood member of the Osage tribe; that she died February 20, 1906, three days after the birth of her child, which lived but three or four hours; that the tribal council objects to its enrollment on the ground that it is illegitimate and lived too short a time, and that there is no question whatever as to the Osage blood and tribal rights of the mother. In this case there is submitted an affidavit from Mrs. Helen Gibson, who says that she was present at the time of the birth of the child, Joseph Coleman; that it was well formed and looked like any other child; that it was born alive and lived three and a half hours; and that she gave it tea, which it "swallowed the same as any well-formed child would do." The attending physician, Dr. W. H. Aaron, swears that the baby was fully developed and was fed tea by the women present; that the mother was very ill, and as he was compelled to give

his entire attention to her, he saw but little of the baby after its birth and until its death.

Concerning the objections as to the enrollment of the child by the tribal council, you are informed that the laws of this country and of England do not require that the child should be capable of continuing to live, but only that it should be born alive. It matters not whether it be mature or immature, so that it is alive. Again, under the laws of the countries mentioned, the slightest voluntary movement by the child is regarded as sufficient to establish a live birth. The question of the child's viability has no bearing on the case; and from the evidence submitted it is clearly shown (1) that the child was born alive; (2) that it was born while the mother was alive; and (3) that the child was born capable of inheriting.

As to the question of the legitimacy of the child, you are advised that the laws of Oklahoma, which would govern in this case, provide as follows:

"(3760) 1. All children born in wedlock are presumed to be legitimate.

"(3761) 2. * * * A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

"(3762) 3. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them."

The parents were legally married before the birth of the child, and the father makes formal affidavit acknowledging the child to be his. It is therefore legitimate.

As the mother was a full-blood member of the Osage tribe and enrolled January 1, 1906, and it has been shown that the child was born alive and capable of inheriting, and is legitimate, its enrollment is authorized and directed under the provision of section 1 of the Osage act approved June 28, 1906, which says that the Osage roll shall consist of "all children born between January 1, 1906, and July 1, 1907, to persons whose names are on said roll on January 1, 1906." The child is therefore to be enrolled, notwithstanding the objections of the tribal council.

Relative to the application of Anna Elliot, a white woman, you say that her son, Enoch Tall Chief, was the result of unlawful intercourse with Eves Tall Chief, a full-blood member of the Osage tribe of Indians, who acknowledged the child as his; and that the council objects to the enrollment of the child on the ground of illegitimacy. With the sworn application of this woman, setting forth the parentage of the child, is an affidavit dated September 1, 1906, by Eves Tall Chief, the putative father, who says that he is "the father of Enoch Tall Chief, who was born on the 8th day of February, 1906, at Fairfax, Osage Indian Reservation." There is also submitted with the case an affidavit dated September 1, 1906, of Mrs. Lula Hines, who says that she attended Mrs. Anna Elliot as midwife February 8, 1906, and there was born to her a male child, which is now living.

It is clearly shown that Eves Tall Chief, a full-blood member of the Osage tribe, and enrolled therewith as No. 333 on the tribal roll of January 1, 1906, is the father of the child, and that by his affidavit acknowledging it the child is entitled to enrollment under that part of the Osage act quoted in the foregoing case. It is therefore to be enrolled as a member of the Osage tribe thereunder, notwithstanding the protest of the tribal council.

The evidence submitted as to the birth and identity of the respective children of William Musgrove, John B. Moncravie, and Eugene Perrier is satisfactory. It is further shown that the fathers of these children were enrolled as members of the Osage tribe January 1, 1906, and that they (the children) were born between January 1, 1906, and July 1, 1907. They are clearly entitled to enrollment under the provision of the Osage act heretofore quoted. You will therefore enroll as members of the Osage tribe Willis Ella Musgrove, Ray L. D. Perrier, and Anna Anita Moncravie as Osage Indians, reference being had to Office letter to you of August 18, 1906, relative to the enrollment of children born to male and female members of the tribe whose names were on the tribal rolls January 1, 1906, in which it was said that where "children of the two classes mentioned are enrolled and whose parents are hereafter found not to be entitled to enrollment, their names will be stricken off with the parent."

The business committee or proper representative of the Osage tribe should be informed that should any of the parents of these children hereafter be found by the Department not to be entitled to enrollment their status will of course follow that of their parents.

In the case of Mrs. Ida Barber, the enrollment of whose child was also objected to for the reason that her name has been placed on the challenged list, the evidence as to the birth and identity of her child is found to be satisfactory; and as her name is on the tribal rolls of January 1, 1906 (No. 888), her child is to be enrolled under the provision of section 1 of the Osage act, which directs the enrollment of "all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January 1, 1906, including the children of members of the tribe who have or have had white husbands."

You will therefore enroll Augustus Barber as a member of the Osage tribe, your attention being called to that part of Office letter of instructions to you of August 18, 1906, referred to in the foregoing case.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

Now, I file these in order to show that the Department has acted just as it saw fit at the time. It has not followed any well-settled policy, and there has not been any well-settled policy in the Department with reference to enrolling people of the Osage tribe. They have at times enrolled those who were objected to by the council and at other times rejected those who were approved of by the council.

In the matter of Mrs. Ellen Hildebrand, who had moved away from the Osage tribe, and who had taken her family with her, and the Osage council had by its act sought to have her name stricken from the roll, the Department, under date of October 10, 1890, sustained her right to enrollment. I also desire to file that letter.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 10, 1890.

LABAN J. MILES,
United States Indian Agent, Osage Agency, Okla.

SIR: Referring to the correspondence had in regard to the case of Mrs. Ellen Hildebrand and family, who claim to be entitled to share in the Osage annuity payments, you are informed that after a careful review of the matter I have concluded that her mere absence from the Osage Reservation is not sufficient cause to deny her her rights as an Osage.

She claims, and I think her statements can be relied upon as true, that her main or only object in residing among the Cherokees is that her children may have the advantages of better school facilities there than they could have among the Osages, and that, generally speaking, they have a better example of daily life set before them and have better health. She may overestimate the advantages to be gained by living where she does, but her purpose is, I think, praiseworthy, and therefore should not be used against her to deprive her of her rights.

You will therefore allow her and her children to share in future annuity payments to the Osages, and send to this Office a certified statement showing the amounts due to her and her family in past payments, when, although their names were placed on the roll, no shares were set aside for them, nor did they receive any money. On receipt of said certified statement the money will be forwarded to you for payment.

Respectfully,

R. V. BELT,
Acting Commissioner.

Mr. LEAHEY. I do not know, Mr. Chairman, that I ought to take up very much time about this matter. I feel very much in this matter like counsel have stated they feel with reference to me. They certainly can not complain about the matter being referred to the courts for a judicial determination. We feel that we would be satisfied with that kind of action by this committee and by Congress, to give us the right to go into court and settle our differences there under existing law. If the contention is correct that we are not entitled to be enrolled, and that the courts would not enroll us if we were required to go there, then certainly they can not be aggrieved on account of this matter being referred to the courts for such a settlement.

I do not feel like going into the evidence in this case because the records are very voluminous, and it would take all of to-day and to-morrow to state even the substance of it.

Mr. MERILLAT. Would you assent to the alleged fraudulent cases going to the courts?

Mr. LEAHEY. I have nothing whatever to do with that.

Mr. MERILLAT. You were counsel for them?

Mr. LEAHEY. I was counsel for them.

The CHAIRMAN. Of course, gentlemen, it is a question for the committee to decide, with all due deference.

Mr. MERILLAT. Pardon me, Mr. Chairman. I was not stating it as an intimation that it should be taken out of the committee's province.

Mr. LEAHEY. With regard to that matter I can only state that the Department in 1898, when it rendered its final decision with reference to the investigation of 1896, failed to find fraud. In 1907 they failed again to find fraud—that is, in the final decisions there were no findings of fraud, and consequently I do not think there is any question there to be referred on the proposition of fraud. We say that we are willing to go into the courts.

The CHAIRMAN. If they had found fraud they certainly would have investigated it?

Mr. LEAHEY. They certainly would have. I desire to say, Mr. Chairman, that in addressing the committee I have only the right to speak for those people that I am particularly representing and not any others.

(At this point the witness was excused and the committee adjourned until to-morrow, Friday, May 8, 1908, at 10 o'clock a. m.)

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
Washington, D. C., May 8, 1908.

The committee met at 10 o'clock a. m.

Present: Senators Clapp (chairman), Sutherland, and Curtis.

STATEMENT OF JOHN J. HEMPHILL, ESQ., REPRESENTING THOMAS J. HUNT AND HIS CHILDREN AND PEARL CALLAHAN.

The CHAIRMAN. Mr. Hemphill, you may proceed.

Mr. HEMPHILL. Mr. Chairman and gentlemen of the committee, I represent in this case Thomas J. Hunt and his children and Pearl Callahan, and am associated with Mr. Leahey in the matter.

The argument of Mr. Merillat for the Osage Nation seems to me to be based upon two erroneous assumptions. The first is that the title of the Osage people is similar to that of the Cherokees. The fact is, that the Cherokees are, by treaty, owners in fee simple of the lands that they occupy, and in addition to that they have a patent which covers their lands specifically, giving it to them in fee simple. It is true that the Osages purchased their land from the Cherokees, but the title was never given to the Osage Nation at all; it is in the United States as trustee for the Osage people, and we contend that the United States, as trustee of that land and as guardian for those Osage Indians, ought to see that the trust is faithfully and honestly carried out, and if so, these people should have been admitted by the tribal authorities, and these people, who are clearly of Osage blood, have just as much title to this property as those who happen

to be on the roll. The fact that a man is on the roll does not constitute him an Osage. The fact that his blood is Osage blood is what makes the distinction with reference to the Osages and every other class of Indians. In addition to that, the Cherokee people, by reason of treaties with the United States, are charged with the management of their internal affairs. The Osage people, on the contrary, while one of the most intelligent of the races of Indians outside of the Five Civilized Tribes, are still and always have been wards, governed by the United States direct through an agent, and the law, which my friend quoted from the Osage constitution, as he called it, stating that the Osages had the right upon petition to admit certain persons to tribal relationship and to enrollment, is not a law that the United States has ever approved or ever permitted them to make.

Mr. KAPPLER. This constitution?

Mr. HEMPHILL. This constitution, yes; and their laws. It is of their own free will. They are wards of the United States, and the United States is guardian and has their property in trust. It is an entirely distinct and different thing from the title of the Cherokees.

Mr. LEAHEY. With the permission of the committee and of Mr. Hemphill, I would like to call attention to the fact that a few years ago the Department, by order, abrogated the tribal organization as it existed under their constitution and set up a new form of government in its stead.

Mr. KAPPLER. Do you mean the act of 1896?

Mr. LEAHEY. I mean prior to that act.

Mr. HEMPHILL. In other words, the United States has absolute and unqualified control of the Osages and of their affairs, internal and external.

Now, it is further stated, or argued, at least, that this allotment act is an agreement between the Osages and the United States. That is entirely erroneous in view of the decision of the Supreme Court in reference to what is known as the Cherokee agreement for the allotment of Cherokee lands. The Cherokee agreement was adopted by a vote of the Cherokee people and approved by Congress. It was an act of Congress adopted by the Cherokees. The Supreme Court of the United States in the Intermarried White Man case (203 U. S., 76) says:

> Counsel of claimants speak of the act of 1902 as a "treaty," but it is only an act of Congress and can have no greater effect.

So it is clear that the Osages can not claim that the Osage allotment act is any such agreement with them: that the United States can not do with them as they see fit, as they would do with any other act of Congress.

Now, the particular complaint that we make here is that the Osage allotment act takes away from us the right which belongs to every other Indian in this country, and that is the right to go into court and have his rights to his allotment settled, whenever it is denied or questioned, and in addition to that——

The CHAIRMAN. Let me ask you a question right there. Suppose the statute never had been enacted, why could not an Indian who claimed an allotment go into court?

Mr. HEMPHILL. Undoubtedly he could. You mean the original act permitting it?

The CHAIRMAN. Yes; the original act.

Mr. HEMPHILL. Well, you see he was not a citizen of the United States; he was a ward of the Government.

The CHAIRMAN. Yes; of course; but I am speaking now of the statute which authorizes them to go into court. Why could not any allottee who has become a citizen under the allotment law and taken his first trust patent, independent of the statute authorizing him to go into court, go into court and enforce his claim?

Mr. HEMPHILL. If he had become a citizen, undoubtedly; but it is expressly provided by act, as you will remember, that all Indian allottees can test their rights to an allotment in court. In the Osage allotment act of June 28, 1906, that law is repealed so far as the Osages are concerned; so that they are denied the right which every other Indian in this country exercises.

Then, in addition to that, we complain that when this question of the right of allottees to allotment and enrollment was placed in the hands of the Secretary of the Interior, instead of deciding those questions himself, he made the Osage council his arbiter in the matter and is governed by them.

The CHAIRMAN. Before you go fully into that, and going back to the allotment—I do not fully trust my memory as to that law—but did that law, in addition to taking away the right to contest their claims, change the rule as to their being citizens?

Mr. HEMPHILL. No, sir; there is no statute of the United States which makes an Osage Indian a citizen.

Mr. MERILLAT. Between 1896 and 1906 could they not have gone into court and tested their rights?

Mr. HEMPHILL. No, sir; I do not think so; there were no allotments.

Mr. MERILLAT. But their right to funds and a share to land?

Mr. HEMPHILL. No, sir; I do not think so.

As I was saying, instead of deciding this question as it ought to have been decided, upon the merits, the Commissioner of Indian Affairs has testified in a former hearing before this committee (pp. 379 and 380 of the print), in answer to some questions by Senator Curtis, "We will enroll Indians of the Osages if the tribe consents. That is something we will always require."

Then speaking of the same thing, on page 380 he says: "I hold that they shall not be enrolled contrary to the wishes of the tribe."

Now, that is simply a case of making judges out of people who are directly interested on the other side. It is similar to the case of a man who leaves an estate, having 25 heirs, and 20 of them agree. The court says, "You other five must submit your rights to the 20 who are already admitted to be heirs."

Mr. MERILLAT. Did you not on yesterday put into the record the statement that the Commissioner of Indian Affairs and the Secretary had enrolled them notwithstanding the action of the council and over the council's protests?

Mr. HEMPHILL. Oh, yes; we did; we say that the Commissioner has announced this policy, but that so far as the former action of the Indian Office is concerned, and that of the Secretary of the Interior in other cases, that it has been contrary to the very statement that he alleges to have been his policy here. We have put into this record a number of cases where the Osage council undertook to exclude them and where the Indian Office or the Secretary has directed their *enrollment over* the heads of the council.

The CHAIRMAN. Yes; yesterday during the argument this statement of the Commissioner in the Crow case, with reference to the Osages, was in the minds of both Senator Curtis and myself. We spoke of it to one another.

Mr. HEMPHILL. Yes, sir; and whatever may have been the argument of the counsel for the Osages about it, it is clear that the Commissioner has such a feeling in his mind that these people ought not to be allowed to enter this tribe unless the council says so that he is not in a position to be a fair and unbiased judge. In addition to that we complain because he has laid down the doctrine that unless a citizen of the Osage tribe is affiliated, and has been affiliated with the tribe, that he will not permit him to be enrolled. That doctrine the Indian Office has overruled in a number of cases, but in our case he has undertaken to make it apply in a number of cases. Now that is not set forth as a requirement of the Osage act at all; it is something that was imported into the act by the Commissioner of Indian Affairs and the Secretary of the Interior.

It has been stated that Messrs. Kappler and Merillat represented Pearl Callahan, who is one of these parties, and they made a motion for a rehearing, setting forth clearly the ground "that there was error of law in importing into the terms of the Osage act of June 28, 1906, a requirement of affiliation as a condition precedent to Osage enrollment, and likewise error of law in holding such a requirement could have application to a minor child by reason of its mother's acts."

That sets forth the ground exactly, and it was very clearly and forcibly argued by our friends on the other side, and they ought to have prevailed.

Take the cases of Pearl Callahan, who is a minor, and five other minor children of Thomas J. Hunt, and it seems to me to be a monstrous doctrine to hold that these minors should have any responsibility of any kind and that they should be excluded from the property that they inherited from their fathers because they had not been affiliated with the tribe. Of course we all know that a child has to go with its parents; it exercises no discretion in the matter. Pearl Callahan was a child born out of wedlock, born of an Osage Indian by the name of Sheshe and a white woman. The woman went off to earn her living.

The CHAIRMAN. Let me ask you if their parents affiliated prior to and at the time of the birth of any of these children.

Mr. HEMPHILL. This girl was.

Mr. MERILLAT. No, sir.

Mr. HEMPHILL. Not the girl herself, but the man who is the father of this child is an Osage by the name of Sheshe, who is enrolled and has always been, and the girl, the mother of Pearl Callahan, was on the Osage Reservation, as I understand it, at the time the relations between them took place. She was a white girl, and in the absence of her parents Sheshe went and stayed all night at her house, having been a friend of the family.

The CHAIRMAN. What was her age at the time?

Mr. MERILLAT. About 16 or 17 years.

The CHAIRMAN. Now, with regard to the Hunt children.

Mr. HEMPHILL. As to the Hunt children, the situation is this: Thomas J. Hunt was born in what was formerly the Osage country in Missouri.

Mr. MERILLAT. It was not then Osage country.

Mr. HEMPHILL. No; I say formerly Osage country.

The CHAIRMAN. Perhaps you had better not make these interruptions. If there is anything you desire to reply to, you will have the opportunity.

Mr. HEMPHILL. His parents died when he was a child, and he went then to live with his sister, Mary Clem, and her husband. They were poor and unable to take care of him when their family increased, so his uncle took him to Arkansas. After he was old enough to work he went out in the world to make cross-ties and eventually landed in the Osage country, and has made that his home ever since. Some of these children—all of them, as far as I know—were born when he was in the Osage country. As to that, however, I am not positive; that is, as to all of them.

Before we get to Thomas J. Hunt I want to say that on this question of affiliation the decision of the Department is directly contrary to the decisions of the courts of this country. In the New York Indian case, which involved the payment of a large amount of money to the New York Indians, it developed that about 800 of them had gone into Canada, and the Secretary of the Interior ruled them out from participation in this fund on the ground that they were not affiliated with the tribe. On my solicitation, or argument, or request, he referred the question to the Court of Claims for decision, and the Court of Claims in the New York Indian case (40 C. Cls. R., 459) held:

> Our Indians are and have been the wards of the United States, and the Indian has no right of expatriation. Whether they may or may not leave the country is a question of Indian policy. In Sitting Bull's case they removed to Canada with the intent of remaining there, and became domiciled so far as Indians could be. The Indian policy required that they should be brought back, and they were brought back. In the case of the Kickapoos they removed to Mexico, with like intent to remain and be domiciled there. The Indian policy required that they be brought back, and they were brought back. In 1842 the Indian policy might have required that the Oneidas be brought back and if it had they would have been brought back. They did not cease to be wards of the United States because they had crossed the border and attempted to domicile themselves in a foreign country; and it was expressly held in the case of Lowe *v.* The Kickapoos (37 C. Cls. R., 413) that "the Indians, being wards of the United States, can not suspend that relation without the consent of the Government."

If Indians can not go to Mexico or to Canada without the permission of the United States, and if when they do go there they are brought back whenever the policy of the United States requires it—much more can an Indian be brought back into the reservation of an Indian tribe whenever the United States sees proper to do so. The courts have also held that it is not in the power of an Indian to take himself away so as to dissolve his relations with his tribe, because he is absolutely under the control of the Government of the United States. It is in the power of the Government to say that he must return to his tribe. If the Government does not choose to say so the Indian is not responsible and could not be held responsible for being absent. So that by holding that the affiliation of these people is necessary there, the Secretary not only imports into the act something that Congress did not put there, but he goes directly in the teeth of the decision of the United States court.

The cases pending here that I have a particular interest in are those of Thomas J. Hunt and his children, and Pearl Callahan.

Thomas J. Hunt is a brother of Mary Clem, and counsel have undertaken to say that Thomas J. Hunt is not entitled because there was some charge of collusion in the enrollment of Mary Clem. That has nothing to do with Thomas J. Hunt's claim. He is here claiming to be an Osage Indian by blood, and is ready to prove it if an opportunity is afforded him.

In the Clem case the facts are that Mary J. Clem is the granddaughter of Susan Larine, who was a half-breed Osage, and who was given an allotment under the treaty of the Osages with the United States in 1825, so that she is clearly a member of the tribe. Susan Larine married a man named Javine first, and their children were Elizabeth Javine, who married a man by the name of Hunt, and Mary Clem is a daughter of Elizabeth Hunt, formerly Javine, and Thomas J. Hunt is the son of the same mother. This Susan Larine subsequently married a second time a man named Cadrick, and had five or six children.

Mary Clem was admitted to the tribe by vote of the council in 1890 or 1891, and subsequently in 1896 the council made charges against a certain number of persons enrolled, amongst them Mary Clem, stating that she had no Osage blood. That question was passed upon by two commissioners, named Houston and Scott, appointed by the Interior Department. They took the testimony of only three witnesses, one of whom was a man named Kisling, whose testimony was taken in secret and Mary Clem's attorneys were not permitted to be present, and when they requested the commissioners to give them a copy of the testimony they said, "We will not furnish you a copy of that testimony unless Mr. Kisling consents to it," and Mr. Kisling declined to give his consent that his testimony should go into the hands of the counsel of Mary Clem, and therefore they denied counsel even the opportunity to look at the testimony of this witness.

The CHAIRMAN. Where was this investigation held?

Mr. HEMPHILL. It was held down in the Osage country by two commissioners named Houston and Scott, appointed by the Secretary of the Interior.

The CHAIRMAN. What evidence have you that they were excluded in the matter of attendance?

Mr. HEMPHILL. I take that from the printed report of Assistant Attorney-General Vandevanter, who was then occupying that position, known as the "Osage Annuity Roll Contested Cases."

The CHAIRMAN. Does he treat that as a conceded fact?

Mr. HEMPHILL. Yes, sir, he says so. I will read just a half a dozen lines of his report:

> The testimony of Kisling was taken by the commissioners in executive or secret session, Kisling stating that "sometimes when there is an uproar" he got embarrassed and forgot. Subsequently the counsel for Mrs. Clem and family asked the commissioners for a copy of Kisling's testimony. The commissioners declined to produce the testimony without the consent of Kisling, which he refused. The counsel for Mrs. Clem and family was consequently denied the right of cross-examination.

Now, the only other testimony against Mrs. Clem was that of two witnesses. A man named Mosier testified that "he could not say whether Mrs. Clem was a white woman or not;" that "he supposed she was a white woman, or French, mostly;" that he "knowed she is a French woman because she has the appearance of a French

woman;" and Jane Appleby swore that she had "known Susan Larine, and that she never claimed to be an Osage; that she never heard of her claiming it; that it was generally known that the 'Perrier crowd and the Clems amongst them' were not Osages."

That is the entire testimony against this woman. On the other hand, the testimony of the witnesses for her contradicts that. The first was the testimony of Angeline Tucker, who was examined when Mary Clem was enrolled. She testifies "that she is 67 years old and that she knew Mary J. Clem, whose father's name was Hunt; that she went with Mrs. Clem to see Mrs. Hardrope and White Hair, and that they claimed kin with her." Now, nobody denies that White Hair and Hardrope were members of the tribe by blood. She testifies further: "And she knew Mrs. Clem's grandmother at Pappinsville, Mo., and knew she was an Osage."

The CHAIRMAN. They are the facts involved in this report that you are reading from?

Mr. HEMPHILL. Yes, sir; the official printed report. And after examining that testimony, Judge Vandevanter says (p. 14):

> It is quite clear that the Osage Nation failed to prove the charge that these parties have no Osage blood.

Now, that is the result of his first examination; on a review of this finding, on page 2 of his second report, printed at the same time, he says:

> I see no reason to change my opinion that, considering the whole case, I can not come to any other conclusion than that the Osage Nation has failed to sustain their charge that Mrs. Clem is not an Osage by blood.

Subsequent to that a rehearing of that case was had under the Osage allotment act by the Osage alloting commission—the present commission—and they decided against her. When it came up to the Interior Department, in addition to the former testimony, five other witnesses had testified that they knew Mary Clem; they knew her mother; they knew her grandmother, Susan Larine, and they knew she was of Osage blood, and they went on to testify to the other members of the family, who were named Cradics, by virtue of the second marriage, and the Secretary of the Interior in that case decided that she was clearly a member by blood of the Osage tribe.

Now, all of the authorities, high and low, agree that Hunt was her brother, descending from exactly the same ancestors, through the Osage side, and of course there is no reason why Hunt, and particularly his children, should not be put upon the roll.

The case of Pearl Callahan you are familiar with, and it is unnecessary for me to go through all the record with regard to her.

Of course we all know that the policy of the Government of the United States was at one time to keep the Indians on the reservation. Now the policy is different, and except for this special provision of the Osage allotment act we would have our rights determined by the courts, and all that we ask is that in view of the fact that certain members of the Osage tribe have gotton hold of the tribal property that they shall not be the judges as to our right to a share of the same property, but that we shall have an impartial court to determine that question, and if we are granted this we are perfectly willing to take the chances of proving our case.

Something has been said—I suppose by way of showing what a magnitude of operations it is going to amount to—that the Osage Indians have certain charges against 100 or 125 of the people who are on the roll. Their case is entirely different from ours. In the first place, in our case we have been denied that which has been granted to all other Indians. They have not been denied anything. In the second place, instead of the Commissioner of Indian Affairs deciding our case in conformity with the law, he has brought into it this question of affiliation, which has not been brought into the question relating to the frauds that these people charge against certain persons enrolled; and in addition to that the Commissioner of Indian Affairs has permitted himself as a judge to become influenced, if not absolutely guided, by the decision of a body of people—the Osage council—directly interested in keeping us off the roll.

The CHAIRMAN. What you mean is that he referred it to them rather than being influenced by it?

Mr. HEMPHILL. Yes, sir; he practically referred it to them.

Another thing, if there is any charge of fraud against the people the Osage Indians claim are improperly enrolled, they are themselves the guilty parties. We are not responsible for that, and of course it is for the committee to say whether they propose to have this case opened up or not. But we do not want our cases mixed up with the alleged fraudulent cases; we want to stand upon our merits and let the committee determine whether they will have the other cases opened up or not. But it is clear that if any fraud has been committed the Osage council are the people who have permitted the fraud, if they have not themselves been guilty of it, and the argument of counsel on the other side that some money was used in the admission of some of these people is pretty good proof that it is not a tribunal that our rights should be submitted to; and the Secretary of the Interior and the Commissioner of Indian Affairs did not do us justice when they permitted our rights to be determined by those people, who are not only partial judges, but, according to the statements of their own counsel, are subject to influences that are unworthy and unbecoming any honest people.

Now, if the committee sees fit to give us the right to go to the courts, like other Indians, we will undertake to establish our rights either in the circuit court or the Court of Claims, as the committee may deem best to insert in the bill.

I thank you, gentlemen.

Mr. KAPPLER. I desire to insert in the record extracts from the Crow hearing bearing on the Commissioner of Indian Affairs' position which Mr. Hemphill omitted to read, as follows:

Mr. DIXON. I want to make this observation, in view of what Senator Curtis has said, that it has been my experience that, when an Indian reservation has been opened in my State, men with an infinitesimal amount of Indian blood will immediately go back and want to be enrolled and participate in the division, when, for a generation or two generations, they have lived away from the Indians and have resented being called an Indian, and are only attracted by the money that is to be divided.

* * * * * * *

The CHAIRMAN (Mr. Clapp). There is one thing, Mr. Commissioner, that I think perhaps is not quite clear in the record, with respect to dealing with Indians off the reservation. As I understand the policy of your Office—and it is based very largely upon my experience with your Office in my own State—you have been most liberal in the policy of allowing Indians on the reservation to go off the reservation to seek

employment and still retain their rights there; but when the opening of a reservation has aroused interest in people who have a trace of Indian blood that has lain dormant for a great many years, you are rather disposed to let the Indians say as to whether they shall come in and participate.

Commissioner LEUPP. That is it, exactly; yes, sir.

The CHAIRMAN. That is my experience in dealing with your Office in my State.

Senator DIXON. If he is a real Indian the Office has no objection?

Commissioner LEUPP. No objection in the world, but it seems to me his own people are the best judges.

Senator DIXON. It is the white Indians that the Office is a little averse to?

Commissioner LEUPP. I am on the lookout with a shotgun for them all the time.

(Hearing Crow Indian Reservation, pp. 380, 382, and 383).

STATEMENT OF LORENZO A. BAILEY.

Mr. BAILEY. Mr. Chairman, under the circumstances of the short notice given by the committee to me, I am unprepared to go into this matter in detail. I understand that Messrs. Kappler and Merillat are also employed by the Osages, and have presented the matter to the committee this morning. They are doubtless fully informed as to the details of the case.

I am under contract with the Osages, and a portion of the resolution, which was passed when I was appointed, relates to the purging of the rolls. I have not had any opportunity to confer, as I should like to have done, with Messrs. Kappler and Merillat to see what has been done or what they would think proper to suggest to the committee, but for myself it seems to me that this matter of the rolls should rest until some plan could be devised by which the rolls could be settled forever. A great many people have been put on the roll, and who are on now, that the Osages believe should go off. The council was very urgent about that. They feel that they were not sufficiently protected in the legislation that was had for the settlement of matters between the Government and the Osages, and it is part of my duty to bring that before Congress. I have not been here before because there was some little technical difficulty about my contract. I am under contract with them, but pending the adjustment of that matter I thought I had better wait and not come here unless I got a notice, and this morning I received a notice at about 10 o'clock.

Now, that I have the ear of the committee for a moment, I would like to say that the Osages had a delegation here in February of this year. You remember that I was here sometime before that, stating their desire to come here, and asking if we could get assistance in the matter, and as the Department would not represent them they were not represented. At last they came here and made this contract with me, and this involves a matter for the rolls. They claim also that the allotment or laying off of the land—the allotting of the land to those people—is all wrong because of some uncertainty, in fact possible error, was made in the surveys; so the people will find later on they have got something they did not want and were not intended to have, and also, in other matters, this legislation, it seems to me, should be changed.

The CHAIRMAN. Let me see if I am correct in my apprehension of this matter. My understanding is that all the land has been absorbed by allotment, and that these claimants, if they come in at all, it would be a claim against the fund? Is that correct?

Mr. MERILLAT. The fact is, and I think it will be undisputed, that all of the land has not been allotted that these applicants are claiming the right to now be put upon the roll and to be given money in lieu of land or value of the land in money, because any allotments they could now select would not be equal in worth to the value of the allotments to those people whose right upon the rolls has never been disputed or denied. That is correct, is it not, Mr. Leahey?

Mr. LEAHEY. About three-fourths of the land has been selected.

Mr. BAILEY. I would like to suggest to the committee that the matter of putting people on the rolls and taking them off of the rolls would not be the best method. It seems to me that Congress should approve a method by which a judicial inquiry could be made; that is, a thorough official inquiry by judicial methods, and I trust the committee will consider that matter very carefully. If these people are put on now, there will be others who will want to go on. The Osages will come here and complain about it, stating that they have not been given an opportunity to be heard on the facts. The committee is now asked to go over the old records, where these things have been passed upon, and as far as I can learn there has been no judicial inquiry where the party could come in, as is done in the courts, with the right to examine and cross-examine witnesses, meeting each other face to face, and thrashing out the matter as white people are accustomed to do. I submit that that is one objection, and I understand that is the one thing before the committee this morning. Confining myself to these 37, I ask the committee on behalf of those 37—I join the other gentlemen in that—to at least postpone that until we can devise some safe, reasonable, and fair plan by which the whole question of the rolls can be finally and forever settled.

I am not prepared at this moment to say more upon the subject, having been called up here hurriedly from other matters and without a chance to refer to my papers or memoranda.

The CHAIRMAN. The main question before the committee is as to these 37 people, and speaking solely for myself, I think the only way to adjust the matter would be the way by which they could have been adjusted had not the law giving these people the right to appear in court been practically repealed, and I would like to take the sense of counsel on both sides—of course this is tentative—and have it appear in the record as to which course would be preferable in case it was decided to send this to the court, to send it to the Court of Claims or to the circuit court.

Mr. KAPPLER. We prefer the Court of Claims, if any such action is taken.

Mr. LEAHEY. We would prefer the proper circuit court of Oklahoma, and I think the tribe would prefer that court. I think the Indian agent would prefer, if he expressed an opinion, to have it tried in the circuit court of the United States.

Mr. BAILEY. May I suggest to the committee that we let that matter rest a day or two until we hear from the council. Let the council say what would be well.

Mr. KAPPLER. We have been in communication with the council and know just how they feel about it.

Mr. BAILEY. About that particular question?

Mr. KAPPLER. They will take our advice about it.

Mr. BAILEY. Then I will not interfere with you, if you take that position. If you are specially employed I will not undertake to interfere in that regard.

Mr. MERILLAT. We would like to say that we are the authorized representatives of the Osage council under the terms of a regularly approved contract. The Osage council denies that Mr. Bailey is their attorney and authorized to speak for them. I personally do not know about that matter, and have never seen the contract. I understood from some of them that three or four, and perhaps other members, had signed some paper, but never the council. The council has spoken upon this question——

The CHAIRMAN. This will result in my having to make the same criticism that was made to the counsel on the other side yesterday. Your suggestion will probably call for a reply from Mr. Bailey. What I want to ascertain is your views as to which court it would be best to go in case the committee decides to send it to a court.

Mr. MERILLAT. Mr. Chairman, I would not have made the remarks I did but for the fact that Mr. Bailey has made certain remarks that did not voice the views of the Osage council, as conveyed to us by resolution with respect to their wishes as to an investigation generally. That was the only reason why I did it. If it had not been for the statement at the close of his remarks, I should have said nothing.

The Osages, as far as they have spoken to us, would prefer the Court of Claims very much to the circuit court, but before we close we would like to make a statement or two with reference to what Mr. Hemphill said, simply by way of correction, as we deem it, of the record, and in order that the record may be complete—especially, for example, answering your question as to whether or not those persons who are applicants had or had not as a matter of fact been born while their fathers or parents were in affiliation with the tribe. The record is that John Thomas Hunt, one of the applicants, and the father of the other Hunts, was born in Missouri in about 1856, and that after his mother's death he lived with his half sister, Mary Clem, and afterwards went to live in Arkansas, where he married Laura Webb in 1888, who bore him the children named. Those children, the record shows, were not born while the father was affiliated with the Osages, and were not born on the Osage Reservation. The finding of the Department is that the present applicant seems to be disinclined or unable to prove his alleged Osage descent, and recommended on that, among other grounds, that the application be denied, following up Judge Vandevanter's decision in the Banies case that if the father at the time was not affiliated, but had renounced his citizenship and become a citizen of the United States, then the children would have no rights.

Now, that is the fact with reference to the Hunts; it is the fact with reference to the Strattons, the McCrarys, the Lovelands, and others, that those children were all born of parents who at the time of the birth of those children were incorporated into the American body politic, and there is a denial of Osage citizenship. The agent and the members of the council inform me that not one, with the possible exception of Jane Appleby, not one of these persons claiming rights ever in person appeared before the council or the Indian agent and set forth their birth or made any application whatsoever, but remained away personally. The Osage constitution was recog-

nized by Congress in the act of 1887, and in the Osage allotment act of June 28, 1906. That constitution required affiliation.

Furthermore, with respect to the rolls, the act of Congress of June 28, 1906, providing for the final settlement of the Osage affairs and these enrollments, specifically directed that weight and respect should be given to those rolls as made up and in existence as the acts of the Osage council. They at the very beginning said, "that the roll of the Osage tribe of Indians as shown by the records of the United States at the Osage Agency as it existed January 1, 1906, together with children born between January 1 and July 1, 1907, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof."

Therefore, under the very act of Congress—which act of Congress was simply in similitude to that of the Five Civilized Tribes—it was directed that the rolls, as made up, at a time when there was no controversy, and the matter was not of such pecuniary interest, should be treated with due weight and due respect, and that is simply what has been done by the Secretary of the Interior and the other officers when they came to consider the matter of enrollment of any claimant. They would give weight and respect and authority to the rolls, but not conclusive weight and authority.

The CHAIRMAN. Now, Mr. Kappler, you stated that you preferred the Court of Claims. Why would it be more convenient? Would this rest more largely on documentary evidence than on oral evidence?

Mr. KAPPLER. I think it would depend largely on documentary evidence.

Mr. MERILLAT. Very largely.

Mr. KAPPLER. Then, again, there would be certain influences down in that country that perhaps would be adverse to the Osages. Up here there could be no such influences.

The CHAIRMAN. Well, the committee will hardly assume that the circuit court of the United States could be influenced.

Mr. KAPPLER. I mean with respect to getting witnesses.

The CHAIRMAN. It is a fact, however, that it would be largely documentary evidence.

Mr. KAPPLER. Yes, sir.

Mr. HEMPHILL. There would be a number of witnesses to be examined.

Mr. LEAHEY. It would be both documentary and witnesses too. If it was tried here it would have to be done on depositions, which is not at all as satisfactory as taking a witness into the court room and placing him before the judge.

Mr. MERILLAT. The United States judge would require, as is done in chancery cases, that the deposition be taken down and submitted to him in writing. The United States judge would not have these people before him personally, but would conduct it as an equity proceeding is conducted.

The CHAIRMAN. I am inclined to think that that would probably be the case. Gentlemen, the committee will consider the matter.

Mr. BAILEY. Mr. Chairman, will the committee hear a word or two from me?

The CHAIRMAN. No; not as to a matter of controversy.

Mr. BAILEY. I am not going to say anything by way of controversy. I want the Osages to be represented here in these matters that they have referred to me. As this is to be a permanent record and as Mr. Merillat has spoken upon the subject, I merely wish to say for the information of the committee that on the 10th of March last the delegation sent here from the Osage Nation, consisting of the principal chief and assistant and another, executed a contract which was acknowledged before Judge Barnard of the supreme court of the District of Columbia. That is my authority, and I wish the committee to understand that I have that to support my claim to represent the Osages here. I am not here to interfere in any way with what anyone else is doing for the Osages. I thought I was giving assistance rather than challenging controversy.

The CHAIRMAN. Unless there are some other statements the hearing will be closed.

Mr. HEMPHILL. We have nothing further to suggest, Mr. Chairman, and are much obliged to you for your courtesy.

Dr. H. M. HAMBLIN. Mr. Chairman, I desire, with the permission of the committee, to offer some exhibits to be printed in the record.

The CHAIRMAN. They will be received.

Doctor HAMBLIN. I will first offer for insertion in the record a copy of my letter, dated May 6, 1908, to the chairman of this committee, which briefly outlines Exhibits A, B, and C.

The letter and exhibits referred to are as follows:

WASHINGTON, D. C., *May 6, 1908.*

CHAIRMAN SENATE COMMITTEE OF INDIAN AFFAIRS,
Washington, D. C.

SIR: I desire to submit to your committee certain exhibits touching upon the proof of the Osage blood of Nora and Angeline James, Floyd, Thelma, and Grace Thompson, Blon and Justin Pappan, Maudie and Panzy Fronkier, together with the four unallotted children of Mrs. Isabella Auld, all of whom are of Osage blood, though born in the Kansas tribe of the Osage Nation. These children above named trace their Osage blood directly from Pawhuska (White Hair), the great Osage chief, through his grandchildren, the Gonville sisters, who were married to the Pappans and Fronkier, and their half brother, Joseph James, jr.

The exhibits are as follows:

Exhibit A, such part of a letter, dated St. Louis, December 7, 1816, as relates to the Kansas band of the Osage Nation, and signed by the United States commissioners, William Clark, Ninian Edwards, and Aug. Chouteau, together with a letter transmitting the full letter from the Indian Office on May 4, 1908.

Exhibit B, consisting of the act of March 3, 1871, allowing Osage half-breeds to purchase 160 acres of land in the Osage diminished reserve in Kansas, with Certificate No. 4, issued to Frank James, an Osage half-breed, on September 16, 1871, with a copy of a deed, made by Frank James and his wife, on September 30, 1872, to Joel C. Dougherty, of Kansas, and the letter transmitting the deed for approval to the Commissioner of Indian Affairs, of date January 8, 1873.

Exhibit C, which consists of a letter from the Commissioner of Indian Affairs, dated May 4, 1908, inclosing a copy of the letter of transmittal from Maj. Rett Miller, Osage Indian agent, to Dr. H. M. Hamblin, of Newkirk, Okla., of a list of the descendants of Pawhuska, the Osage chief, who at this time are enrolled as Osages. The letter and copy sent by Miller to Hamblin will explain themselves.

It is proper to state that this list of the descendants of Pawhuska, who were found to be upon the Osage roll, on December 24, 1907, were the direct descendants of Pawhuska, through his grandchildren, the Gonville sisters and their half brothers, Joseph James, jr., and Frank James.

We would respectfully ask that these be printed as a part of our hearing in the case.

Very respectfully,

DR. H. M. HAMBLIN.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1908.

Dr. H. M. HAMBLIN,
The Vendome, Washington, D. C.

SIR: In compliance with your request of the 1st instant, there is inclosed a copy of a letter dated December 7, 1816, written by Gen. William Clark, Superintendent of Indian Affairs, to the Commissioner of Indian Affairs.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

ST. LOUIS, MO. TER., *December 7, 1816.*

SIR: In our last letter we had the honor to inform you that Messrs. Brown & Gamble, the gentlemen who were employed to run the line of the Osage cession, from the Missouri to the Arkansas rivers, had safely arrived at this place; and that their detention so much beyond the period we had anticipated, proceeded from the loss of a number of their pack horses, and the necessity of returning by a circuitous route of about 600 miles for the purpose of obtaining subsistence. In addition to which it appears, that the Osage cession is very considerably larger than was supposed either by ourselves or by the Indians; which with a variety of occurrences of minor importance, necessarily required a longer time for the performance of the duties assigned those gentlemen, than we had imagined to be necessary. We have, however, the pleasure of stating that the business has been completed to our entire satisfaction, and that every part of the conduct of those gentlemen in relation thereto, has received our decided approbation.

The Kansas, however, who are in part a tribe of Osages, but who neither were parties of the treaty of cession, nor have ever received any part of the annuities which were stipulated as the consideration thereof, pretended to set up, and asserted with a good deal of zeal, an original right in common with the rest of the nation to a part of the ceded land. But the difficulty with them, which at first threatened to be serious, has been so far happily adjusted, by encouraging them to hope that a reasonable amount of presents will be annually distributed among them for some years to come. For which your letter of the 7th of May last, is presumed to furnish sufficient authority; and in pursuance of which we have now the honor of recommending an annuity of $500 for fifteen years to be allowed them.

We have the honor to transmit herewith a map exhibiting the whole extent of the Osage cession, and the lines thereof, that have been recently run and marked; together with an account of expenses incurred in establishing the same.

We have the honor to be, very respectfully, sir,
Your obedient humble servants,

WM. CLARK,
NINIAN EDWARDS,
AUG. CHOUTEAU,
Commissioners.

Hon. WILLIAM H. CRAWFORD,
Secretary of War.

EXHIBIT B.

OSAGE HALF-BREEDS.

[U. S. Stats. at Large, vol. 16, p. 557, March 3, 1871.]

No. 2043. AN ACT Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and seventy-two, and for other purposes.

* * * * * * *

Provided, That each half-breed or mixed-blood of the Osages, being twenty-one years of age or the head of a family, shall, under such rules and regulations and on such proofs as shall be prescribed by the Secretary of the Interior, be entitled to enter, without cost, within the diminished reservation of the Osage Indians in Kansas, a tract of land, in compact form and by legal subdivision, not exceeding one hundred and sixty acres, upon which such half-breed or mixed-blood have heretofore actually settled and made

improvements: *Provided, however*, That such half-breed or mixed-blood so entering such and shall thereby forfeit all claim to lands within the Indian Territory which have been or shall be purchased out of the proceeds of the sale of the land of the Osages, in the State of Kansas: *Provided further*, That the land so entered shall not be alienable by such half-breed or mixed-blood without the consent of the Secretary of the Interior, approved by the President. (*a*)

Certificate No. 4.—United States to Frank James.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
September 16, 1871.

Whereas by the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and seventy-two, and for other purposes," approved March 3, 1871, it is provided "That each half-breed or mixed-blood of the Osages, being twenty-one years of age or the head of a family, shall, under such rules and regulations, and on such proof as shall be prescribed by the Secretary of the Interior be entitled to enter without cost, within the diminished reservation of the Osage Indians in Kansas, a tract of land in compact form, and by legal subdivisions, not exceeding one hundred and sixty acres, upon which such half-breed or mixed-blood have heretofore actually settled and made improvements;" and

Whereas Frank James, claiming the right to enter land under the above provisions of law, filed with the register of the United States land office for the district of lands subject to sale at Humboldt, Kansas, proof in support of his rights to enter the east half of the southwest quarter and the west half of the southeast quarter of section nine in township thirty-one south, of range sixteen east, containing one hundred and sixty acres, according to the official plat of survey of said township on file in the General Land Office; and

Whereas the said proof is found to be in accordance with the rules and regulations prescribed by the Secretary of the Interior, and with the provisions of said act, and has been approved by the said Secretary; now, therefore,

This is to certify that the said Frank James, in consideration of the premises, is entitled to have and to hold the said tract of land with the appurtenances thereof, subject to the proviso as set forth in the above act, and which is as follows: "*And provided further*, That the land so entered shall not be alienable by such half-breed or mixed-blood, without the consent of the Secretary of the Interior, approved by the President."

In testimony whereof, I, W. W. Curtis, Acting Commissioner of the General Land Office, have hereunto set my hand, and caused the seal of said Office to be attached this sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy-one.

[L. S.] W. W. CURTIS, *Acting Commissioner.*

Approved.

C. DELANO, *Secretary of the Interior.*

Recorded volume 13, pages 352, 353, and 354. Recorded January 19, 1872, at 3 p. m. Attest: Norman H. Ives, register of deeds. Patent Book A, page 91.

STATE OF KANSAS, *Montgomery County, ss:*

We hereby certify that the above and foregoing is a true, correct, and complete verbatim copy of a patent certificate from United States to Frank James, as recorded in Book A, page 91, in the records of Montgomery County, Kans.

THE PARISH ABSTRACT AND REALTY COMPANY,
DWIGHT A. PARISH, *Secretary.*

Warranty deed.—Frank James and wife to Joel C. Dougherty.

This indenture, made this thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-two, between Frank James and Ellen James, his wife, of Cherry Township, in the county of Montgomery and State of Kansas, of the first part, and Joel C. Dougherty of same township, county of Montgomery, in the State of Kansas, second part.

Witnesseth: That the said party of the first part in consid——— of the sum of twelve hundred dollars, to them duly paid, has sold and by these presents do grant

and convey to the said party of the second part, his heirs and assigns, all that tract and parcel of land situated in the County of Montgomery and State of Kansas and described as follows, to wit: "East half of the southwest quarter and the west half of the southeast quarter of section nine (9), in township thirty-one (31) south of range sixteen (16) east, containing one hundred and sixty acres, more or less, with the appurtenances and all the estate, title, and interest of the said parties of the first part therein.

And the said parties, Frank James and Ellen, his wife, do hereby covenant and agree that at the delivery hereof they were the lawful owners of the premises above granted and seized of a good and indefeasible estate of inheritance therein, free and clear of all incumbrances, and that they will warrant and defend the same in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever against all persons lawfully claiming the same.

In witness whereof, the said party of the first part have hereunto set their hand and seal the day and year above written.

ELLEN (her x mark) JAMES.
FRANK (his x mark) JAMES. [SEAL.]

Signed, sealed, and delivered in presence of—
GEO. S. BEARD,
J. D. EMERSON.
Witness to Frank James's signature—
JAS. C. LEONARD.

STATE OF KANSAS, *Montgomery County, ss:*

On this 24th day of October, A. D. 1872, before me, a notary public in and for said county, came Frank James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same, and that I made known to him the contents of the deed and explained to him its purport and meaning, and that he fully acknowledged the signing, sealing, and execution thereof, and was satisfied and content with the consideration paid and secured to be paid therefor, and that he executed the said deed and made the acknowledgment of the s——— without any circumvention or under persuasion of the grantee or any ——— or persons whomsoever.

In witness whereof I have hereunto set ——— name and affixed my official seal the day and year last ab———.

[L. S.] JAS. C. LEONARD, *Notary Public.*

STATE OF KANSAS, *Montgomery County, ss:*

On this 30th day of September, A. D. 1872, before me, a register of deeds in and for said county, came Ellen James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same, and that I made known to the grantor the contents of the deed and explained to her its purport and meaning, and that she freely acknowledged the signing, sealing, and execution thereof, and was satisfied and content with the consideration paid and secured to be paid therefor, and that she executed the said deed and made the acknowledgment of the same ———thout any circumvention or under persuasion of the grantor or any ot———on or persons whomsoever.

In witness whereof I have here———scribed my name and affixed my official seal the day and ye——— above written.

[L. S.] N. H. IVES, *Register of Deeds.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
February 11, 1873.

The within deed to Joel C. Dougherty from Frank James (and wife), a half-breed Osage Indian and beneficiary under the act of Congress approved March 3, 1871, is respectfully submitted to the Secretary of the Interior with the recommendation that the same be laid before the President for his approval.

H. R. CLUM, *Acting Commissioner.*

DEPARTMENT OF THE INTERIOR,
February 17, 1873.

The within deed is respectfully submitted to the President for his approval.

[L. S.] C. DELANO, *Secretary.*

EXECUTIVE MANSION,
February 17, 1873.

The within deed is hereby approved.

U. S. GRANT.

Volume 6, pages 118–119–120. Recorded July 27, 1874, at 2 p. m. Attest: George S. Beard, register of deeds. Deed book G, page 288, in Records of Montgomery County, Kans.

STATE OF KANSAS, *Montgomery County, ss:*

We hereby certify that the above and foregoing is a true, correct, and complete verbatim copy of the deed from Frank James and wife to Joel C. Daugherty, as recorded in Book G, page 288, in the records of Montgomery County, Kans.

THE PARISH ABSTRACT AND REALTY COMPANY,
DWIGHT A. PARISH, *Secretary.*

OFFICE OF INDIAN AFFAIRS, CENTRAL SUPERINTENDENT,
Lawrence, Kans., January 8, 1873.

Hon. F. A. WALKER,
Commissioner:

Inclosed I transmit for approval and return a deed duly executed by Frank James and wife (half-breed Osages) to Joel C. Daugherty in Montgomery County, Kans., for 160 acres of land under provision of act of Congress approved March 3, 1871. By the accompanying letter of the agent it appears from the incompetence of the grantor it is requested the remaining proceeds of sale be retained in trust by this office for his benefit. With such approval by Department it would be so retained and paid from time to time under the advisement of their agent as the necessities of his family required.

Respectfully, ENOCH HOAG, *Superintendent.*

(Indorsed:) January 8, 1873. Enoch Hoag, Lawrence, Kans. Inclosed for approval deed from Frank James and wife, half-breed Osages, to I. C. Daugherty. (Land files Neosha, 1871–1874.)

(Indorsed on back:) Certified copy of deed, Book G, page 288. Furnished by the Parish Abstract and Realty Company, bonded title abstracters, conveyancers, and notary public, 211 East Main street, Independence, Kans., for Dr. H. M. Hamblin. Charges paid.

EXHIBIT C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1908.

Dr. H. M. HAMBLIN,
The Vendome, Washington, D. C.

SIR: As per your request of the 2d instant, there is inclosed a copy of a letter addressed to you by the United States Indian agent of Osage Agency on December 24, 1907, relating to the descendants of Pawhuska, who was a chief of the Osage tribe.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, UNITED STATES INDIAN SERVICE,
OSAGE INDIAN AGENCY,
Pawhuska, Oklahoma, December 24, 1907.

Dr. H. M. HAMBLIN,
Newkirk, Okla.

SIR: The list of Osage families inclosed with your letter of the 21st instant has been checked up with the records of this Office, and as corrected is, I believe, a complete, correct list containing all of the members of the families indicated.

Very respectfully,

(Signed) RET MILLARD,
United States Indian Agent.

List of descendants of Pah Hu Scah on Osage roll.

Frank Lessert and Susan Pappan (heads of family): Charles Lessert, Joe Lessert, Walter Lessert, Ben Lessert, David Lessert, Frank Lessert, jr.

Children of Ben Lessert: William K., Wade, Susie, Benjamin L., Fay, Fanny.

Children of Frank Lessert, jr.: Mary J., Robert A., Grace J., Ray L., Cora L.

Children of David Lessert: Guy Lessert, Millie M., Charles A., Hattie.

THE FRONKIER FAMILY.

Descendants of Ben Fronkier.—Augustus Fronkier, Philip Fronkier, Josephine Soldani (with six children as follows): Myrtle, Emmert A., Louis E., Kate P., Ida M., Agnes. Amelia K. Soldani (with seven children as follows): Frank E., Charles L., Clarence, Grace M., Rose M., George H., Mary L. Simon Fronkier (with four children as follows): Florence, Blanche L., Benjamin, Philip. Laura Souligny (with one child as follows): Mildred V.

Descendants of David Fronkier.—Rosa Rogers (with four children as follows): Emmett, Cecelia, Maude, Flora. William Fronkier, Arthur Fronkier.

LA SARGE FAMILY.

Descendants of Mary Josephine Davis.—Charles La Sarge (dead), Fanny La Sarge, Joseph La Sarge, Minnie La Sarge, Ellen La Sarge.

Children of Charles La Sarge: Marie La Sarge, Louis La Sarge, Arthur La Sarge, Charles V. La Sarge.

Children of Fannie La Sarge: Henry Krebs, Bessie Edminston.

Children of Joseph La Sarge: Ellen La Sarge, Harold L. La Sarge.

Children of Ellen La Sarge Cross: Lou M. Cross, Charles L. Cross, Martha C. Cross (dead), Candis J. Cross.

Martha Alexander (with four children as follows): Levi, Margaret, Mary, Ida.

Children of Levi Alexander Martha I., David C.

Mary Trumbly (with one child as follows): Oscar Trumbly.

Children of William Pappan: Samuel T. Pappan, Lee A. Oakley, Lester.

Monette Pappan Baker (with five children as follows): Myrtle C., Morris A., Frank T., Martha B., John Thomas, jr.

Descendants of Frank James.—Mary J. Brown (with two children as follows): Edith, Louis M.

Doctor HAMBLIN. I also desire to have placed in the record the following extracts from the letter of the Acting Commissioner of Indian Affairs, dated April 12, 1907, to the Secretary of the Interior, relative to the application of 89 persons for enrollment with the Osage tribe of Indians.

The extracts referred to are as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 12, 1907.

The honorable SECRETARY OF THE INTERIOR.

SIR: I have the honor to submit herewith for your consideration letters dated January 31, February 9 and 18, and March 8, 1907, respectively, from the United States Indian agent of the Osage Agency, reporting on the applications of 89 persons for enrollment as members of the Osage tribe of Indians. Their cases are discussed as follows:

* * * * * * *

"Mrs. Pearl Armstrong (nee Garrett) for the enrollment of her minor child, Ola Martin.

"The applicant alleges that she was married on June 30, 1900, to a full-blood Osage named James Martin, who was the father of her child, Ola, born November 3, 1900, at the house of Alexander Pappin, an Osage Indian, and that her parents were present at the time of her marriage. Her statements are corroborated by the affidavits of her parents.

"From the agent's report, it appears that Pearl Garrett was a girl of loose character, associating alike with Indian and with white men; that he can find no record of the alleged marriage; that his predecessor in office refused to consider her application for the enrollment of her child for the reason that the alleged father could not furnish proof of his divorce from his former wife, Anna Mizer; and that the child has been given to its grandparents.

"The tribal council rejected the application for the reasons that sufficient evidence was not furnished to prove that there was a legal marriage, and that no evidence of a divorce from his former wife was furnished by Martin.

"The evidence shows that the mother was a woman of easy virtue and was not living with Martin at the time of the birth of the child. Although the act of Congress approved June 28, 1906 (34 Stat. L., 539), authorizing the enrollment of children born to members of the Osage tribe does not require that the children shall be legitimate in

order to be enrolled, yet as the applicant has failed to prove that her child is of Osage blood, or that the father was a member of the tribe, it is recommended that her application be rejected."

* * * * * * *

"Otwin (Anthony) James, 49 years of age, for his minor children—Nora, Angeline, and Joseph Vivian James; Mrs. Josephine Thompson (a sister of Otwin James) for her son, Floyd Thompson, and Charles Thompson, son of Mrs. Josephine Thompson, for his minor children, Grace and Thelma Thompson.

"The applicants allege that they are of Osage blood from Joseph James, jr. (father of Otwin James), who was a mixed Osage and Kaw Indian. The evidence clearly establishes their claim of Osage blood. It also shows that Joseph James, jr., married Margaret Curley, a Pottawatomie Indian, but continued to reside among and affiliate with the Kaws, with whom he was enrolled, and that his children, including Otwin or Anthony, were enrolled with their mother as members of the Pottawatomie tribe and were also carried on the Kaw rolls.

"By a provision in the treaty of November 16, 1861, with the Pottawatomies (12 Stat. L., 1192), as modified by the treaty of March 29, 1866 (14 Stat. L., 763), and February 23, 1867 (15 Stat. L., 533), certain members of the tribe became citizens of the United States and received proportionate shares of the tribal estates, both lands and moneys. Mrs. Margaret Curley and her children, including Anthony, received, some time prior to 1876, allotments of land and proportionate shares of the annuities as Pottawatomies and thereby became citizens of the United States. Her children thereupon were dropped from the Kaw tribal rolls. In 1899 Anthony or Otwin and his brother applied for reinstatement with the Kaws; and the Secretary of the Interior, in a decision dated December 15, 1899, held that they were not entitled thereto, and by receiving their distributive shares of the tribal property had become citizens of the United States."

* * * * * * *

"Weso Pappan for his minor children, Blon and Justin, and Mitchell Fronkier for his minor children, Pansy and Maud Fronkier:

"The applicants contend that they are of Osage blood, and the evidence shows that they are of not to exceed one-eighth Osage blood—their children being one-sixteenth. The evidence shows also that they and their parents have always affiliated with and resided among the Kaws, and that they have not been considered as members of the Osage tribe. From the records of the office it appears that Weso Pappan, his wife, and one child were alloted lands with the Kaws, as were Mitchell Fronkier and family—including his children who were living at the time the allotments were made."

* * * * * * *

"Although possessing a small degree of Osage Indian blood, these minor children are citizens of the United States, having been born to citizen parents, and are clearly not entitled to enrollment with the Osage tribe. It is therefore recommended that the applications of Weso Pappan and Mitchell Fronkier be denied."

* * * * * * *

April 15, 1907.

The recommendations contained herein are hereby approved.

(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

Doctor HAMBLIN. Mr. Chairman, I also desire to have put in the record a copy of my letter to yourself, dated May 7, 1908, which briefly outlines Exhibit D, which follows.

(The letter and exhibit referred to are as follows:)

WASHINGTON, D. C., *May 7, 1908.*

Hon. MOSES CLAPP,
Chairman Senate Committee on Indian Affairs,
Washington, D. C.

SIR: I desire to submit to your committee Exhibit D, which is a family chart or tree of the unallotted descendants of Pawhuska, the great Osage chief.

These descendants are Nora and Angeline James, Floyd, Thelma, and Grace Thompson, Blon and Justin Pappan, Maudie and Panzy Fronkier, together with the four unallotted children of Mrs. Isabella Auld, all of whom are of Osage blood, though born in the Kansas tribe of the Osage Nation. These children above named trace their

Osage blood, either upon their fathers' or mothers' side, directly from Pawhuska (White Hair), the great Osage chief, through his grandchildren, the Gonville Sisters, who were married to the Pappans and Fronkier and their half brother, Joseph James, jr.

Upon page 8 of the hearing held on April 29, 1908, on joint resolution 70 appears the following:

"With letters of January 15, 16, 20, and 30, 1908, H. M. Hamblin filed, as attorney in fact, certain additional affidavits in the above cases, and was advised in response that as the applications had been finally passed on by the Secretary of the Interior, in accordance with the provision of the act of June 28, 1906 (34 Stat. L., 539), which act also provided that such determination 'shall be final,' the cases could not be given further consideration.

"The additional evidence has been examined and is found to be merely cumulative of the applicants having Osage and Kaw blood. It in no way affects the status of the matter."

It is proper to state that when this evidence was sought through a special messenger sent to Osage Mission, Kansas, he was informed that the records kept by the Jesuit fathers of the Catholic Church at that place had been burned, so we failed to file them prior to the decision of the Secretary of the Interior on April 15, 1907. These records are cumulative in that they increased the Osage blood of the Fronkier and Pappan children from one-sixteenth to one-eighth—in fact, they doubled the amount of their Osage blood. They increased the blood of the James children from three-sixteenths to one-fourth.

This explanation is necessary, as this family tree shows the blood of a child as given by the Secretary of the Interior on April 15, 1907.

Each child named in joint resolution 70 has its name underscored by two red lines. Each one of the other unallotted children, descendants of Pawhuska not named on resolution 70, has its name underscored by one red line. The tree otherwise will explain itself.

Very respectfully, Dr. H. M. HAMBLIN.

(The committee thereupon adjourned.)

Exhibit D—2.

1 father's side
$\frac{1}{16}$ on father's side
ıer's side
er's side

Another daughter
Name unknown
Married Louis Gonville
His second wife
See Exhibit D—1.

eon, white
- Lillie J. Spurgeon—$\frac{1}{16}$
- Alice R. Spurgeon—$\frac{1}{16}$
- Ellen Spurgeon—$\frac{1}{16}$

ston, white
- William H. Peniston—$\frac{1}{16}$
- Charles Marcus Peniston (deceased)

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 483.

OPENING OF ROLLS

HEARING

BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ON THE BILL (S. 4736)

EXTENDING THE PROVISIONS OF AN ACT APPROVED FEBRUARY 6, 1901, ENTITLED "AN ACT AMENDING AN ACT OF AUGUST 15, 1904, ENTITLED 'AN ACT MAKING APPROPRIATIONS FOR CURRENT AND CONTINGENT EXPENSES OF THE INDIAN DEPARTMENT, AND FULFILLING TREATIES AND STIPULATIONS WITH VARIOUS INDIAN TRIBES FOR THE FISCAL YEAR ENDING JUNE 30, 1895, AND FOR OTHER PURPOSES,'" TO ANY PERSON CLAIMING ANY RIGHT IN THE COMMON PROPERTY OF THE CHOCTAW AND CHICKASAW INDIANS OR TRIBES

WASHINGTON, D. C.
THURSDAY, APRIL 23, 1908

MAY 15, 1908.—Presented by Mr. Clapp and ordered to be printed.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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COMMITTEE ON INDIAN AFFAIRS

SIXTIETH CONGRESS

MOSES E. CLAPP, CHAIRMAN.

PORTER J. McCUMBER.	JOSEPH M. DIXON.
ROBERT J. GAMBLE.	WILLIAM J. STONE.
GEORGE SUTHERLAND.	JEFF DAVIS.
FRANK B. BRANDEGEE.	THOMAS H. PAYNTER.
ROBERT M. LA FOLLETTE.	ROBERT L. TAYLOR.
CHARLES CURTIS.	JOSEPH F. JOHNSTON.
NORRIS BROWN.	ROBERT L. OWEN.

LEE F. WARNER, CLERK.

OPENING OF ROLLS.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
April 23, 1908.

The committee met at 10 o'clock a. m.

Present: Senators Clapp, McCumber, Gamble, Sutherland Brandegee, Curtis, Brown, Dixon, Stone, Davis, Paynter, Johnston, and Owen.

GEORGE A. WARD, having been duly sworn by the chairman, testified as follows:

The CHAIRMAN. Your name in full?

Mr. WARD. George A. Ward.

Senator DAVIS. Your age?

Mr. WARD. Forty-four.

Senator DAVIS. Residence?

Mr. WARD. Domicile, Washington. Legal residence, Atchison, Kans.

Senator DAVIS. Occupation?

Mr. WARD. Law clerk, Indian Office.

Senator DAVIS. You are familiar with the subject of the enrollment of citizens of the Choctaw and Chickasaw nations?

Mr. WARD. I am.

Senator DAVIS. What position do you occupy in the Indian Office?

Mr. WARD. I am law clerk in the Indian Office.

Senator DAVIS. Law clerk in the Indian Office.

Mr. WARD. Yes, sir.

Senator DAVIS. Do you remember the visit of the subcommittee consisting of Senators Clapp, Owen, and myself to the Secretary of the Interior recently?

Mr. WARD. On the 16th of this month.

Senator DAVIS. About that time?

Mr. WARD. Yes, sir.

Senator DAVIS. What position in the department service did you occupy at that time?

Mr. WARD. I was law clerk, and in addition to that I was chief of the Indian Territory division.

Senator DAVIS. Since the visit of that subcommittee to the Secretary of the Interior has your department been abolished?

Mr. WARD. The division has been abolished.

Senator DAVIS. The division has been abolished?

Mr. WARD. Yes, sir.

Senator DAVIS. When was it abolished with reference to the visit of the subcommittee?

Mr. WARD. It was abolished last Saturday. That would be the 18th.

Senator DAVIS. The day after—the second day after the visit of the subcommittee the division of which you were head was abolished?

Mr. WARD. Yes, sir. I don't remember the date of the Secretary's order.

Senator CURTIS. I was going to ask you the date of the order.

Senator DAVIS. Don't you know, as a matter of fact, that it was abolished the 17th or the day following?

Mr. WARD. I do not.

Senator DAVIS. At any rate you received notice of it on the 18th?

Mr. WARD. Yes, sir.

Senator DAVIS. Now, Mr. Ward, does that curtail your salary in any way?

Mr. WARD. No, sir.

Senator DAVIS. Then you simply do less work and get the same pay?

Mr. WARD. I probably have really more work to do, because now I will have the law work of the entire office, and the legislation, and everything of that character. Heretofore I only looked after these matters so far as my own division was concerned and acted with the people of the other divisions in an advisory capacity. Now it will all come to me and the boys who will help me.

Senator DAVIS. Now, Mr. Ward, had this discontinuance of that department any connection with the visit of this committee?

Mr. WARD. I think not.

Senator DAVIS. Did you know of the intended visit of the subcommittee?

Mr. WARD. I did not, but I——

Senator SUTHERLAND. I think Mr. Ward should be permitted to explain.

Senator DAVIS. I will give him an opportunity to do that with another question. You say you do not know whether it was in connection with that visit or not?

Mr. WARD. I do not.

Senator DAVIS. What did the Secretary of the Interior say to you when that was discontinued, or didn't he say anything?

Mr. WARD. He said nothing to me.

Senator DAVIS. By what means was the fact of the discontinuance communicated to you?

Mr. WARD. By order of the Secretary of the Interior communicated to the office.

Senator DAVIS. Did you go to see the Secretary in person about the discontinuance of the division?

Mr. WARD. I did not.

Senator DAVIS. Have you ever talked with the Secretary in person about the matter?

Mr. WARD. About a year ago——

Senator DAVIS. I refer, Mr. Ward, to the time since the visit of that committee?

Mr. WARD. No, sir.

Senator DAVIS. Were you expecting this division to be discontinued?

Mr. WARD. I expected it would be discontinued, but probably not so soon.

Senator DAVIS. Do you state that it is not your opinion that this division was discontinued because of the visit of this committee and the information which you gave?

Mr. WARD. I do positively and absolutely, and I want to explain here, the Secretary of the Interior telephoned me himself to come over and bring with me Wright's report of November 15, 1907, and I did not know, but I assumed that the committee was there at that time, and as you know I handed him the report, and he is the one that showed it to the committee.

Senator DAVIS. Now, you say that you assume that the committee was there.

Mr. WARD. Yes, sir.

Senator DAVIS. Hadn't it been telephoned to your Department that the committee would be there?

Mr. WARD. No.

Senator DAVIS. You say you didn't know it was there?

Mr. WARD. Until the forenoon——

Senator DAVIS. Hadn't the information been telephoned to your office that the subcommittee was to visit the Secretary?

Mr. WARD. It hadn't been telephoned to me.

Senator DAVIS. Didn't Mr. Leupp know it?

Mr. WARD. I don't know.

Senator DAVIS. Had he told you?

Mr. WARD. He had not.

Senator DAVIS. Hadn't you prepared for the coming of that committee?

Mr. WARD. I had not. The first I knew of it Mr. Brown called me over the phone—that is the young man in the Secretary's office—saying the Secretary wanted to talk to me, and then he telephoned me to come over and bring Wright's report. He didn't say a committee was there or anybody else.

Senator DAVIS. You are perfectly familiar with all the work and details of the Department at Muskogee?

Mr. WARD. I am fairly so.

Senator DAVIS. All the minutiæ and all the details of that Commission is submitted to you, goes through your hands, does it not?

Mr. WARD. You mean their work in the Indian Territory?

Senator DAVIS. Yes.

Mr. WARD. It has—that related to nearly everything except railroads, telephone lines, and one or two other things of that character. They have always been done in the land division.

Senator DAVIS Now, Mr. Ward, if there is anything irregular, improper, or, to use a stronger word, crooked, in the administration of the affairs of the Indians, the Commissioner to the Five Civilized Tribes, or his predecessors, you would know about it?

Mr. WARD. I would if it was on paper and it came before our office; but if there was anything down there that did not come before our office I would not know.

Senator DAVIS. Have you ever discovered anything irregular or improper, so far as it came to your office?

Mr. WARD. No, sir.

Senator DAVIS. What is you opinion about the matter?

Mr. WARD. I——

Senator DAVIS. Just answer the question whether you think it has been conducted fairly.

Mr. WARD. I have no reason to think there has been any crooked work down there There is one thing. In 1896 there was an appeal

from the decision of the Commission to the United States court, and the decision of the court was final. Now, usually the Commissioner stated in his reports that an appeal was taken to the United States court and that the records of the court showed that the applicant was admitted or rejected. We took it for granted. It is now my understanding that there is no record of the court. Judge Springer never entered up the judgments, but attempted to notify the Commission through P. B. Hopkins of what was done.

Senator CURTIS. And your judgment was that he should have referred to that fact instead of leading you to believe there was a judgment of the court?

Mr. WARD. Yes, sir. They should have done that in the first instance.

Senator DAVIS. Under what act of Congress was a great majority of the Choctaw and Chickasaw nations enrolled?

Mr. WARD. Under three acts—really two. The act of June 28, 1898 (30 Stats., 495)——

Senator DAVIS. Wasn't the great majority of the Choctaws and Chickasaws enrolled under that act?

Mr. WARD. The work was really done under both acts.

Senator DAVIS. What per cent of the Choctaws and Chickasaws were enrolled under the act of June 28, 1898?

Mr. WARD. They were all enrolled under the two acts.

Senator DAVIS. What per cent was enrolled under act of June 28, 1898?

Mr. WARD. I don't think there was a roll approved until after the passage of the supplemental agreement, which was July 1, 1902.

Senator DAVIS. Don't you know that seven-eighths of the Choctaws and Chickasaws were enrolled after June 28, 1898?

Mr. WARD. Now, Mr. Bixby and the Commission may have prepared some of these rolls, but it is my recollection that no roll was approved until after the passage of the supplemental agreement.

Senator DAVIS. By the terms of that act were not all persons of Choctaw and Chickasaw blood who were bona fide residents of the Choctaw and Chickasaw nations on June 28, 1898, directed by the terms of that act to be enrolled?

Mr. WARD. No, sir.

Senator DAVIS. They weren't?

Mr. WARD. Only those whose names appeared on the roll or who had been admitted. It was held by the Assistant Attorney-General, Judge Van Deventer, March 17, 1899, that the act of June 28, 1898, did not authorize new applications for enrollment.

Senator DAVIS. Does not that require that all Choctaws and Chickasaws by blood who resided there on June 28, 1898, be enrolled? Isn't that a positive requirement?

[Reads from section 21.]

Mr. WARD. Of the citizens by blood of the other tribes?

Senator DAVIS. Choctaw and Chickasaw nations.

Mr. WARD. Here is the way the paragraph reads:

Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

Senator CURTIS. There is a further provision with reference to freedmen.

Senator DAVIS. I will get to it. Was there any requirement of the submission of an application for enrollment under this provision?

Mr. WARD. I think not.

Senator DAVIS. Has the Department denied any person of Indian blood the right of enrollment to the Choctaw and Chickasaw nations because they did not submit applications under this act?

Mr. WARD. No application is required. Now, if they denied the right of enrollment—I think some were denied on account of not making application within the time by law—no application was required by the Curtis Act. The time had passed when applications could have been made before that act was passed.

Senator DAVIS. No application was required.

Mr. WARD. There was an order of the Secretary of the Interior.

Senator DAVIS. The act does not require it.

Mr. WARD. I do not consider that it does.

Senator DAVIS. How many Choctaws and Chickasaws were denied enrollment by that arbitrary order of the Secretary of the Interior?

Mr. WARD. I have no idea.

Senator DAVIS. Don't your books show?

Mr. WARD. We would have to go over the letter books; yes.

Senator DAVIS. Have you got your letter files?

Mr. WARD. Yes; we would have to go over nine years.

Senator DAVIS. That is not a matter impossible, is it?

Mr. WARD. Certainly not.

Senator DAVIS. That act does not require any application?

Mr. WARD. That is my opinion.

Senator DAVIS. You are familiar with it, are you not?

Mr. WARD. Yes, sir.

Senator DAVIS. Now, the Department, then, has denied the admission to the rolls of Choctaws and Chickasaws simply because they didn't file the applications?

Mr. WARD. Because they did not apply within the time required by law. They must have applied in 1896.

Senator DAVIS. How many people have been deprived of admission on the rolls, you don't know?

Mr. WARD. I do not know. I think we could get that information easier from the Indian Territory than from anywhere else.

Senator DAVIS. Will you furnish that information? You say you can secure it.

Mr. WARD. I will try.

Senator DAVIS. Don't you know they have denied those citizens because they did not make applications for enrollment?

Mr. WARD. I think not.

Senator DAVIS. Don't you know it will run to several thousands?

Mr. WARD. I do not know and I could not remember. I could not remember that great mass of stuff and everybody who was denied and the reason.

Senator DAVIS. The statute doesn't require any application. I want to know how many have been denied.

Mr. WARD. There were so many reasons why denials were made that it would be impossible for me to remember any particular line.

Senator DAVIS. Now, then, if people have been denied admission to the rolls, I mean Choctaws and Chickasaws, because they didn't file applications——

Mr. WARD. Not necessary, it was there. Law of 1898 did not permit new applications.

Senator DAVIS. From whom?

Mr. WARD. The Secretary of the Interior.

Senator DAVIS. It was the fault of the Secretary of the Interior because of violating the law?

Mr. WARD. He was charged with the duty of making these rolls and I suppose he issued the instructions he thought were proper.

Senator DAVIS. Then if there has been any denial or any failure on the part of the Choctaw and Chickasaw citizens to get upon these rolls because of the fact that no application was filed, when the law required none, then the cause of their not being on the rolls is not inadvertence, but the fault of the Department?

Mr. WARD. Unless it is done under that act or some subsequent act requiring application.

Senator DAVIS. Do you know there is no subsequent act requiring application?

Mr. WARD. I am not really positive about that. Yes, there is an act.

Senator DAVIS. Turn to it.

Mr. WARD. The act of April 26, 1906.

Senator DAVIS. Turn to it, if there is an act that requires Choctaws and Chickasaws by blood to make application.

Mr. WARD. (Reads section 2 of act of April 26, 1896, 34 Stat. L., 137:)

SEC. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

Senator DAVIS. Whose parents have been enrolled. Mr. Ward, don't you know that that section don't apply to the question I asked you? These people that I am talking about have never been enrolled. They have been denied enrollment by the Secretary of the Interior through some error.

Mr. WARD. No; it doesn't apply?

Senator CURTIS. The act of 1896 requires applications to be filed, that is known to every lawyer. Under the act of 1896, it was provided that no cases shall be considered unless application was filed prior to December 1, 1905.

Mr. WARD. That is right.

Senator DAVIS. Turn back to the proposition. The act of June 28, 1898, didn't require any application of the persons of Choctaw and Chickasaw blood. The Department summarily denied the admission of these people to the roll who, a great many of them, had not filed applications. Now, do you say that act that you read there referring to children applies to that kind of condition?

Mr. WARD. No, sir.

Senator DAVIS. It does not apply to children of that kind of people.

Mr. WARD. No, sir.

Senator DAVIS. Then there is no act requiring persons of Choctaw and Chickasaw blood to file applications.

Mr. WARD. Do you mean those who were not enrolled?

Senator DAVIS. Yes, sir.

Mr. WARD. The act of June 10, 1896, required applications to be filed within, I think, ninety days.

Senator CURTIS. The provision of the statute is as follows:

And said Commission is directed to continue the exercise of authority already conferred upon them by law and endeavor to accomplish the objects heretofore prescribed to them, and report from time to time to Congress.

The said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of such nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: *Provided, however*, That such application shall be made to such commission within three months after the passage of this act.

The said Commission shall decide all such applications within ninety days after the same shall be made.

Senator DAVIS. Does that apply to Choctaws and Chickasaws of blood?

Senator CURTIS. It applies to all five tribes.

Senator DAVIS. I do not so understand it.

Senator CURTIS. The act of 1898, passed after this one, only authorized the enrollment of those whose names appear on the rolls, and if they were not on the roll it did not matter how much blood they had in them, they were not entitled to enrollment unless they filed an application.

Senator DAVIS. Mr. Ward, the act of 1898 was subsequent to the act of 1896, of course?

Mr. WARD. Yes, sir.

Senator DAVIS. Do you refer back to that now as a justification for the Department not putting those names on the roll?

Mr. WARD. That was what I tried to state in the first instance.

Senator DAVIS. Do you not know that the act of 1898 supplants and takes the place of the act of 1896 that was in conflict with it?

Mr. WARD. I do not understand it so. I was going to say that on March 17, 1899, before my time in the Indian Office and after the passage of this act, Judge Van Deventer rendered an opinion in writing that the act of June 28, 1898, did not provide for new applications; that the applications must have been made under the act of 1896. He held that neither this act, the Curtis Act, nor the provision in the Indian appropriation act of 1897—I believe it was June 7, 1897—provided for new applications, and that enrollment was limited to those who applied in 1896, unless their names were on some roll.

Senator CURTIS. On the roll which you took?

Mr. WARD. Yes, sir.

Senator SUTHERLAND. Let me ask a question at this point. Do I understand that the act of 1896 provides for the enrollment of the members of the Five Civilized Tribes?

Mr. WARD. That is correct.

Senator SUTHERLAND. And applies, of course, to Choctaws and Chickasaws?

Mr. WARD. Yes, sir.

Senator SUTHERLAND. That is a general act applying to all?

Mr. WARD. Yes, sir.

Senator SUTHERLAND. The act of 1898 simply provided for the enrollment of Indians who were on the Indian rolls?

Mr. WARD. On the Indian rolls, or the rolls prepared in 1896 by the Commission, or by the citizenship committee under the provisions of the act of 1896.

Senator SUTHERLAND. And Judge Van Deventer held that the Indians who were not on the Indian roll must make their application under the law of 1896?

Mr. WARD. Unless their names appeared on the roll or they had made application under the act of 1896, that they were out of it.

Senator SUTHERLAND. The act of 1898, then, did not require an application because the Indians who were in the purview of that act were already upon the Indian roll?

Mr. WARD. They were on the roll or had made their application in 1896. If they had not made their application, the act of 1896 authorized the admission of persons to citizenship whose names were not on the rolls.

Senator DAVIS. Was it not the duty of the Indian Commission, after the act of June 28, 1898, to ascertain the Indians—the Choctaws or Cherokees of blood—and put them on the roll independent of any application?

Mr. WARD. Not under the holdings I have just mentioned, because they could not.

Senator DAVIS. You stand, then, on the holding of the court that they must apply under the act?

Mr. WARD. They must have applied and had favorable decision or be on some tribal roll.

Senator CURTIS. This provision of the statute reads as follows:

Said Commission is authorized and directed to make correct rolls of the citizens of blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

Senator DAVIS. That is your act, Senator Curtis?

Senator CURTIS. Yes, sir.

Senator DAVIS. But the act of June 28, 1898, two years subsequently, did not require any application, and I ask you again, Mr. Ward, if it was not the duty of the Commission and not your duty to go and find these Indians of blood and enroll them?

Mr. WARD. I think they did so far as they could.

Senator DAVIS. You think they did. You have not answered my question, and that was whether or not it was their duty, in your judgment, under the law if they never made application or if their names were upon the roll?

Mr. WARD. Under the law, if they never made application or if their names were not on the roll it was not.

Senator DAVIS. The law does not require any application, and I am trying to beat that into your understanding; now, was it or not the duty of the Commission to go out and hunt up those Indians and enroll them independently of any application?

The CHAIRMAN. I do not think, Senator Davis, that in an investigation of this kind any Senator has any right to ask a subordinate of a Department what his judgment is.

Senator DAVIS. He is an expert, Mr. Chairman.

The CHAIRMAN. I do not think any Senator has a right to ask him for his judgment as to a decision of his superior. Any fact, of course, he must state.

Senator DAVIS. He is an expert on these leading questions.

The CHAIRMAN. But in this sort of proceeding to ask a subordinate to give his judgment as to an act of his superior, I do not think it is a proper thing to do.

Senator DAVIS. Very well, I shall not contend with the chairman. Now, Mr. Ward, approximately, just make a rough estimate of it. You say you have to go back to your letter books, but roughly can you give the number of Choctaws and Chickasaws of the blood who were denied enrollment because of their failure to make application under the act of June 28, 1898?

Mr. WARD. It would only be a guess.

Senator DAVIS. Well, what is your guess?

Mr. WARD. I do not think there is over one hundred or one hundred and fifty cases. I can not tell how many people were involved.

Senator DAVIS. You said a moment ago you thought it would reach a thousand.

Mr. WARD. I said I did not think it would reach a thousand. You asked were there not a thousand, and I said, no, I did not think it would reach a thousand.

Senator DAVIS. Do you not know that there are from 7,000 to 10,000?

Mr. WARD. No, sir; I do not know that.

Senator DAVIS. Do you know whether there is any probability of its reaching that much?

Mr. WARD. Not on the ground that they did not apply in time.

Senator DAVIS. Would there be that many who would be denied because of the fact that they were not bona fide residents of the Choctaw and Chickasaw Nation on that date?

Mr. WARD. No, sir.

Senator DAVIS. How many would there be?

Mr. WARD. A very few were denied on that ground, for this reason: It was held if they had ever been residents of the Indian Territory prior to that date that they did not have to be actual physical residents of Indian Territory on June 28, 1898, but if they had ever been residents there and had not expatriated their citizenship, they would still be entitled to enrollment.

Senator DAVIS. Do you not know that there is a large number of Chickasaws and Choctaws of blood in the State of Texas, State of Arkansas, and the State of Mississippi who have been denied enrollment on the ground that they were not actual residents of the nation on the 28th of June, 1898?

Mr. WARD. There may have been some in the first commencement of the work. It may have been that that was the holding in the earlier days, but later the holding was just what I have stated.

Senator DAVIS. The holding has been that they must have had actual bona fide residence in the Territory at that time, was it not?

Mr. WARD. I am not sure about that. That may have been the holding in the earlier part of the work.

Senator CURTIS. Let me read this:

That nothing contained in this act shall be construed to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

Senator DAVIS. Now, there are Arkansas Choctaws and Texas Choctaws, are there not?

Mr. WARD. I think, as a rule, the persons you have referred to would be considered as Mississippi Choctaws.

Senator DAVIS. Although they live in Arkansas or Texas?

Mr. WARD. Oh, we enrolled a number of people who live in Mississippi as Mississippi Choctaws.

Senator DAVIS. Do you not know that there were a large number of Cherokees and Choctaws who had gone to Mississippi and Arkansas to work, who were bona fide residents of the Territory on the 28th of June, 1898?

Mr. WARD. No, sir; I do not. I could not tell you what they went to Arkansas for.

Senator DAVIS. Of course, you might not know what they went there for, but they were there temporarily.

Mr. WARD. No; I do not think anybody was denied who was a resident of the Indian Territory temporarily away.

Senator OWEN. In the Yeargain case the reverse was held.

Mr. WARD. I recollect that case. He was a Cherokee and was living in Arkansas.

Senator DAVIS. Referring back to the proposition that the Secretary of the Interior, Mr. Hitchcock, arbitrarily struck off a number of names from the rolls because they had not filed application prior to the 28th, or under this act of June 28, 1898, I will ask you if that question has not gone through the court, the court of appeals of the District of Columbia, in the Goldsby case?

Mr. WARD. Their names were not stricken from the rolls because they had not made application under the act of June 28, 1898.

Senator DAVIS. Why were they stricken off?

Mr. WARD. For various reasons, in accordance with the opinion of the Department of Justice of February 19, 1907—that is, most of them. Some were stricken off because after they were enrolled we found that they had died too soon, but after the testimony was filed we would find that maybe he died two years before that, and we would strike his name off. There were also some double enrollments. Now, the bulk of the names that were stricken off were eliminated under the opinion of the Department of Justice.

Senator OWEN. What was that opinion?

Mr. WARD. That is in the Ethel Pearson case, and a whole lot of cases covering a certain class of cases in one opinion.

Senator DAVIS. How many cases did the Secretary of the Interior examine in one week prior to March 4, 1907, and act upon?

Mr. WARD. I could not tell that, Senator, without going into the record, but I should suppose probably 1,500 or 1,800. I am talking about our office; I do not know what the Secretary's office did.

Senator DAVIS. Do you not know that there were from 2,000 to 3,000 applications examined there in less than ten days prior to the 4th of March?

Mr. WARD. I do not think there were that many; there were probably 1,800.

Senator DAVIS. How much property would that involve?

Mr. WARD. It would depend entirely upon the different nations; it is different in the different nations. For instance, in the Choctaw

and Chickasaw Nation it would be much more valuable than in the Seminole, and in the——

Senator DAVIS. I am talking now about the Choctaws and Chickasaws.

Mr. WARD. Do you mean 1,800 Choctaws and Chickasaws alone?

Senator DAVIS. Yes.

Mr. WARD. No; I do not think we did. I want to correct that. I mean in the entire Territory, the Five Tribes.

Senator DAVIS. You mean as many as 1,800 applications of the Five Civilized Tribes were examined in ten days?

Mr. WARD. Yes, sir; I think so; that is my judgment, but not of the Choctaws and Chickasaws alone.

Senator DAVIS. How many of the Choctaws and Chickasaws do you think were examined and passed upon and excluded from the rolls?

Mr. WARD. That would probably be—I do not think there were any Seminole cases—probably half.

Senator DAVIS. Probably half of the Choctaws and Chickasaws?

Mr. WARD. Yes, sir.

Senator DAVIS. You mean in a week?

Mr. WARD. Yes, sir.

Senator BRANDEGEE. And excluded from the rolls?

Mr. WARD. No, sir; many of them were admitted.

Senator BRANDEGEE. I understood Senator Davis to ask if they were excluded from the rolls.

Senator DAVIS. That was the question.

Mr. WARD. No, sir; many of them were admitted.

Senator DAVIS. What per cent were rejected and what per cent admitted, in your judgment?

Mr. WARD. Well, I believe that 60 per cent—not 60 per cent of the number of persons, but 60 per cent of the number of cases—were excluded.

Senator DAVIS. Sixty per cent were excluded of those 1,800 applications, which were examined in a week?

Mr. WARD. Yes, sir; possibly ten days; 60 per cent of the cases examined.

Senator DAVIS. Do you think that was due consideration?

Mr. WARD. They all had due consideration.

Senator DAVIS. Was not that just a peremptory striking from the rolls, and was it not so considered?

Mr. WARD. No; they were not on the rolls.

Senator DAVIS. I know they were not on the rolls, but refusal of application. You know what I mean?

Mr. WARD. No, sir; it was not peremptory; the cases were all read in our Office. Take the Miller case, for instance, and that case that came up in the oil field, the Riley case. We sent and got copies of that new testimony, and before Mr. Bixby got the case up we were ready for it, and when Congress would not extend the time and when the case reached us we were already prepared. We did that in the large cases.

Senator DAVIS. You say there were very few applications denied because the Indian had abandoned his tribal relations?

Mr. WARD. I do not think there were any disallowed on that ground.

Senator DAVIS. Does not the general law provide that they shall not be denied on that ground?

Mr. WARD. We did not work under the general law. The general law has no application to the Indian Territory.

Senator CURTIS. You mean the Five Tribes?

Mr. WARD. Yes, sir; the Five Tribes. Do you mean the act of 1887?

Senator DAVIS. The general law of May 20, 1902.

Mr. WARD. I do not know what that law is. I thought you meant the act of 1887.

Senator DAVIS. You say you acted upon the advice of the Department of Justice, whose opinion was that the Secretary of the Interior might strike those names off.

Mr. WARD. I have forgotten at the moment whether it was signed by Mr. Bonaparte or Mr. Purdy. I think it was signed by Mr. Bonaparte.

Senator DAVIS. You are not sure of that?

Mr. WARD. No, sir; I am not sure whether it was signed by Mr. Bonaparte or Mr. Purdy as Acting Attorney-General.

Senator DAVIS. Don't you know that it was signed by a young man, an assistant there, who had very little knowledge of law?

Mr. WARD. I know it was not.

Senator DIXON. Who was that young fellow in the office at that time?

Mr. WARD. I understand that Mr. Harr had considerable to do with the preparation of it.

Senator DAVIS. He is the young man I refer to. He prepared the opinion, did he not?

Mr. WARD. I do not know.

Senator DAVIS. Is that not your understanding?

Mr. WARD. No, sir; my understanding is that he and some other man up there—I have forgotten his name—prepared the opinion, but I do not know that he did; it is simply what I have heard.

Senator DAVIS. Now, were there any names struck from the Choctaw and Chickasaw rolls after they were approved by the Secretary of the Interior?

Mr. WARD. After the rolls were approved?

Senator DAVIS. Yes.

Mr. WARD. Yes, sir.

Senator DAVIS. How many?

Mr. WARD. This list that I have here includes the names that were stricken off for all reasons, and, as I told you a while ago, most of them were stricken off or eliminated under the opinion of the Department of Justice.

Senator DAVIS. Just tell us approximately how many were stricken off after the rolls were approved.

Mr. WARD. Choctaws by blood for all reasons, 1,170.

Senator DAVIS. Well, Chickasaws too. The Choctaws, you say, were 1,170?

Mr. WARD. Yes; that is, for all reasons.

Senator DAVIS. That were stricken off by the Secretary after the rolls were completed?

Mr. WARD. You mean after March 4?

Senator DAVIS. After they were approved by the Secretary, yes.

Mr. WARD. Yes, sir; but not after March 4, 1907.

Senator DAVIS. But after they were approved; that is what I am talking about.

Mr. WARD. Yes, sir.

Senator DAVIS. How many Chickasaws?

Mr. WARD. Taking the minor children—I do not know how many there were; there are, I guess, about 35, or something of that kind—just one page and three over on the next.

Senator DAVIS. How many Chickasaws were stricken off after the rolls were approved?

Mr. WARD. Two hundred and forty-three Chickasaws, minor children of the Chickasaws included.

Senator DAVIS. How many freedmen of each tribe and their children?

Mr. WARD. Chickasaw freedmen, 183.

Senator DAVIS. How many freedmen of the Choctaws?

Mr. WARD. Choctaw freedmen, 25.

Senator DAVIS. How many children?

Mr. WARD. I think that includes the children, if there were any.

Senator DAVIS. How many Cherokees were stricken off after the rolls were approved?

Mr. WARD. I think it is 377. Now all told——

Senator DAVIS. Three hundred and seventy-seven. How many of the freedmen of the Cherokees?

Mr. WARD. One moment, and I will explain this. All told, there were stricken from the Cherokee roll—the adult roll—1,519; that included the intermarried whites whose names were taken off the roll under the decision of the Supreme Court in the Red Bird case, where the court held that the intermarried whites of the Cherokee Nation who married subsequently to November 1, 1875, were not entitled to enrollment.

Senator CURTIS. Right at that point, Mr. Ward, let me ask you a question. How many persons whose applications are covered by the case of James Rudolph Garfield, Secretary of the Interior, *v.* the United States of America, in re ex rel. John Goldsby, come within that decision whose names were stricken from the rolls?

Senator DAVIS. After the roll was approved.

Mr. WARD. Well, omitting the intermarried Cherokees, in my judgment, at least 60 per cent.

Senator DAVIS. Sixty per cent of the number you have mentioned?

Mr. WARD. Yes, sir; I want to make a conservative estimate.

Senator DAVIS. Do you not think that there was as many as 3,000 persons stricken from the roll after it was approved by the Secretary—freedmen and of blood, and the children and all, that fall within the rule laid down in the Goldsby case?

Mr. WARD. No, sir; the total number stricken for all causes is twenty-two hundred and something—I have forgotten just the number—but 2,243, I think.

Senator CURTIS. That is for all causes?

Mr. WARD. Yes, sir; that is excluding the intermarried Cherokees.

Senator DAVIS. Has not the supreme court of the District of Columbia, and the court of appeals of the District of Columbia, held that action of the Department to have been without authority of law?

Mr. WARD. Yes, sir; both courts.

Senator DAVIS. Both courts have held this action of the Secretary of the Interior to be without authority of law.

Mr. WARD. Yes, sir; that his jurisdiction ended when he approved it.

Senator DAVIS. That was the decision of the court.

Mr. WARD. Yes, sir.

Senator DAVIS. That case is pending on appeal in the Supreme Court of the United States, is it not?

Mr. WARD. The Goldsby case and the Allison case; yes, sir.

Senator DAVIS. The Goldsby case and the Allison case and several other cases. Now, has not the Department of Justice and the Attorney-General's Office advised your Department and the Secretary of the Interior that he can not maintain the contention of the Department with reference to this matter and there is no use to press that appeal?

Mr. WARD. No, sir; he may have advised the Department to that effect; but if he did, I do not know it.

Senator DAVIS. You do not know about that?

Mr. WARD. No, sir; I was not at the conference, if they had one.

Senator DAVIS. But as a matter of files of the office, do you not know that fact?

Mr. WARD. No, sir; because they handle those cases in the office of the Assistant Attorney-General for the Interior Department, and I am not familiar with what has been done in regard to them.

Senator DAVIS. Then you know nothing about that?

Mr. WARD. All the correspondence has been by the Department.

Senator DAVIS. Who would know that fact if it has been communicated to the Department?

Mr. WARD. Either Mr. Woodruff or the Secretary.

Senator DAVIS. Mr. Woodruff or Mr. Garfield?

Mr. WARD. Yes, sir. I want to make this clear. When a suit would be brought—the mandamus suits in the lower court, and most of it was done over the phone—they would telephone to me, "send us the records in such a case," and I would send them over to the Department and whatever correspondence was had with the Department of Justice was conducted by the Department and not by our office.

Senator DAVIS. Then we will have to call upon either Mr. Woodruff or Mr. Garfield to ascertain that fact. You do not know anything about it?

Mr. WARD. I do not know anything about it.

Senator DAVIS. I have asked you who this case was prepared by and you said you did not know.

Mr. WARD. Yes, sir.

Senator DAVIS. And you do not know whether it was signed by Mr. Bonaparte or not?

Mr. WARD. No; it was either signed by Mr. Bonaparte or Mr. Purdy. I am not sure about that.

Senator DAVIS. And you do not know by whom it was prepared?

Mr. WARD. No, sir; I do not know that.

Senator DAVIS. Your opinion is that Mr. Harr had considerable to do with the preparation of the case?

Mr. WARD. Yes, sir.

Senator DAVIS. Mr. Harr is a young man in the office, is he not?

Mr. WARD. I have never met him but a couple of times. I should judge he is a man pretty close to 40 years of age.

Senator DAVIS. I mean he is young in the service.

Mr. WARD. I do not know about that; I never saw him until about the time that opinion was rendered.

Senator DAVIS. What is the contention of your office with reference to those names having been stricken off by the Secretary—that they can not be reinstated or that they can be?

Mr. WARD. We have had that matter under consideration in an informal way—that is, there has been no correspondence about it; I have talked it over there in the office with the boys, and I have talked to the Secretary about it, and Mr. Wilson, and if the Supreme Court of the United States holds that the Secretary had no authority to strike those names off we will decide; we have not reached a conclusion whether our action was not a nullity, and whether the names are not really on the roll.

Senator DAVIS. Well, now, do you not contend in your Department that each of those people must file a separate suit?

Mr. WARD. That was the contention at first.

Senator DAVIS. Has that not been the practice; and have not suits already been filed?

Mr. WARD. Oh, no, sir; there has been about 15 suits, I think, filed, involving probably 100 persons.

Senator DAVIS. Did not the Commissioner of Indian Affairs and the Secretary recommend to Congress the inclusion in the Indian appropriation bill of an item authorizing the Secretary of Interior to approve contracts with attorneys who had brought, or who were thereafter to bring, suits for the reinstatement of each of those persons whose names, you say, have been stricken off, whose names have been illegally stricken from the roll, and providing that any contract thus approved should be regarded as a lien upon the share of the tribal property each person should receive?

Mr. WARD. Yes, sir.

Senator DAVIS. That matter went through, did it not?

Mr. WARD. I do not know whether it is in the bill or not.

Senator DAVIS. It is in the bill, I tell you that. You recommended it.

Mr. WARD. Yes, sir.

Senator DAVIS. It was an amendment of Senator Stone, who is not in the room at present. That amendment went through on the Indian appropriation bill, and each one of those fellows has to bring a separate suit under your contention, has he not?

Mr. WARD. That is just what I explained—I do not know.

Senator DAVIS. But that is your contention?

Mr. WARD. It was originally.

Senator DAVIS. Is it not now?

Mr. WARD. I tell you that we are now considering that very question that I told you about.

Senator DAVIS. You have not changed that conclusion that you originally adopted about it, have you?

Mr. WARD. Not as far as I know.

Senator DAVIS. Then you still entertain that conclusion, do you not?

Mr. WARD. We entertain it to the extent that we are considering, as I told you, whether our action is not a nullity if the Supreme Court says we had no right to strike those names off.

Senator DAVIS. If you reached that conclusion you reached a proper one. But up to this time each one of those fellows who wants to get reinstated under this ruling, according to the rules of your Department, would have to bring a separate suit.

Mr. WARD. Yes, sir.

Senator DAVIS. But under this amendment the Secretary of the Interior is authorized to approve contracts with lawyers which give the lawyers a lien on the man's interest in the tribal property?

Mr. WARD. I do not think it is a lien. My understanding was that the lien feature was stricken out.

Senator DAVIS. Just get the amendment and see. Do you know whether it was stricken off or not?

Mr. WARD. No, sir.

Senator DAVIS. Do you not know that it was not stricken off?

Mr. WARD. No; I told you that it was my understanding that it was stricken off. When we sent it here, as I recollect it, there was no lien provided for.

Senator DAVIS. In that view of the matter the poor Indian would not have very much left.

Mr. WARD. Yes; that was the reason we fixed it in that way. The Secretary will fix the attorneys' fees.

Senator DAVIS. Instead of giving him a lien on everything the Indian had?

Mr. WARD. I do not think we recommended a lien. Instead of giving him 40 per cent we give him 5 or 10 per cent, or whatever the Secretary thinks proper.

Senator DAVIS. Did you recommend that amendment that I have just referred to, in writing, or was it a verbal communication?

Senator MCCUMBER. What amendment was that?

Senator DAVIS. The amendment that provided that each fellow should bring a separate suit and that the Secretary of the Interior should approve contracts with lawyers giving them a lien on the man's property.

Senator MCCUMBER. Mr. Ward has already answered that he did not recommend it.

Senator DAVIS. He said he did not think they recommended a lien. Now, as to that recommendation, how was it made, in writing or was it a verbal communication?

Mr. WARD. I saw the amendment before it came up here, and as I recollect it it was prepared in the office of the Assistant Attorney-General. I do not know whether he sent it up informally or whether a letter was sent. It may have passed through our office, but I am not certain.

Senator DAVIS. Do you know how many judgments have been obtained in the United States court—that is, approximately how many persons secured judgments from the United States district court, known as the citizenship court?

Mr. WARD. Do you mean that had favorable judgments in 1896?

Senator DAVIS. Yes, sir.

Mr. WARD. I think something like 4,000—something near that—probably a little over.

OPENING OF ROLLS.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
April 30, 1908.

The committee met at 10 o'clock a. m.

Present: Senators Clapp (chairman), McCumber, Gamble, Sutherland, Brandegee, Curtis, Brown, Dixon, Stone, Davis, Paynter, and Owen.

STATEMENT OF HON. JAMES R. GARFIELD, SECRETARY OF THE INTERIOR.

Senator DAVIS. Mr. Secretary, can you give the committee any provision of law or any authority of law whereby Secretary Hitchcock was empowered or authorized to withdraw from the common property of the Chickasaw and Choctaw Indians 1,373,000 acres of land for a forest reserve and a game preserve?

Secretary GARFIELD. As I understand, the action taken by Secretary Hitchcock in connection with that matter was that he declined to allow the selection or allotment to be made within that area for the purpose of presenting to Congress the question that was presented last year regarding the ultimate establishment of a forest reserve in that area. I do not have in mind this morning the provisions of the act under which Secretary Hitchcock acted. I will have to look that up and see exactly what was done.

Senator DAVIS. Well, do you know of any provision of law authorizing such action upon the part of Secretary Hitchcock?

Secretary GARFIELD. I do not recall any specific provision of law. I know that as far as my own action is concerned in regard to this matter that this year, when the question came up again, I concluded that I would not permit allotments to be made or selections to be made within that area. I do not recall what the acreage was. The purpose of my action was to allow the Indian owners under an act of Congress to determine what would be the wisest ultimate use of their property, and I took that action under the general theory that the Secretary of the Interior—the Government—is the guardian of all those Indians, all those tribes, and that as such guardian it was the duty of the guardian to take such care of the property as would best conserve the interests of the ultimate owners of the property.

Senator DAVIS. Do you remember the number of acres of unallotted land of the Choctaws and Chickasaws?

Secretary GARFIELD. I do not have that in mind.

Senator DAVIS. Well, do you not know that it is 2,892,000 acres of land?

Secretary GARFIELD. I do not recall the figures.

Senator DAVIS. You do not recall the figures?

Secretary GARFIELD. No, sir.

Senator DAVIS. Why?

Mr. WARD. On the ground that the Secretary of the Interior has taken the action and he is the one you should ask. I do not know under what law he did it or how he did it. He may know of some law under which he acted.

Senator DAVIS. But you do not know of any, do you?

Mr. WARD. I told you that I refused to answer the question.

Senator DAVIS. But it is a fact that he has withdrawn 1,400,000 acres of land down there from allotment, claiming that he is going to make a forest reserve and game preserve out of it, is it not?

Mr. WARD. I explained to you what my understanding of it was.

Senator DAVIS. Is that not your understanding?

Mr. WARD. My understanding is that his idea is to buy it of the Choctaw and Chickasaw nations—that is, the United States Government is to buy it for a national forest reserve. That is the way I understand it.

Senator BRANDEGEE. What Secretary was it who withdrew this land from allotment?

Mr. WARD. Mr. Hitchcock.

Senator BRANDEGEE. I will state for the information of Senator Davis—he does not probably know the fact—that that matter was gone into at a hearing last year, at which Secretary Hitchcock testified, and he was asked the same question.

Senator DAVIS. What authority of law did he give?

Senator BRANDEGEE. I was going to refer you to the hearing. I do not remember his exact words, but it was his opinion, if I remember it correctly, that he had the discretion. In his view, if there had been any question of fraud or irregular proceeding, or where it was for the best interest of the United States, the land could be withdrawn. There were a number of questions on that point that were asked by Senator Teller and myself, and the matter was gone into at considerable length. The hearing itself would be the best evidence.

The CHAIRMAN. It occurs to the chairman that some members of the committee may have some bills that they desire action upon at this time. If so, we will suspend this hearing.

Mr. WARD. I just want to say one word to the committee. When I was before you on some bill—I have forgotten just what it was—I made the statement that I thought we knew of about 150 people, or that we had a list of about 150 people, who were legally entitled to enrollment, and I made the same statement over there the other day. Since then I have counted the names of the persons mentioned in Mr. Wright's report of November 15, 1907, and there are 52. I want to correct that statement.

Senator DAVIS. Before we dispose of Mr. Ward, I wish the chairman will not permanently excuse Mr. Ward, but have him report at our next meeting, and Secretary Garfield also.

The CHAIRMAN. Very well.

Senator OWEN. I would like to ask that the restriction matter come up on Saturday morning, if it suits the convenience of the committee.

The CHAIRMAN. The chair will call a full meeting of the committee at 10 o'clock on Saturday morning next.

Thereupon, at 12 o'clock, the committee adjourned until Saturday, April 25, 1908, at 10 o'clock a. m.

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Senator DAVIS. You do not recall the figures?

Secretary GARFIELD. No, sir.

Senator DAVIS. Well, then, it is your policy, is it, to still hold these 1,373,000 acres of land that was withdrawn by Mr. Hitchcock for forest reserve and game preserve from allotment to the Indians, is it?

Secretary GARFIELD. It is my policy to withhold that area. I do not know whether it was withdrawn for a game preserve or a forest reserve. It is certainly not held in that way by me. I do not know what ultimate use will be made of that land.

Senator DAVIS. Why did you withhold that from allotment?

Secretary GARFIELD. I withheld it from allotment because the character of the land is such that I believe it may be made, if Congress so determines, very much more valuable for the Indians as a forest than by allotting it individually to the members of the tribe.

Senator DAVIS. Then you can not point to any specific provision of law authorizing you to withhold this land from allotment, can you?

Secretary GARFIELD. I do not recall any specific provision. I will look it up and see. I was not aware that this was the point that the committee desired to question me upon this morning. I understood that it was with regard to the opening of the rolls. However, I will look that matter up.

Senator DAVIS. Mr. Secretary, have there not been numerous applicants for allotment upon this particular area of land?

Secretary GARFIELD. Not that I am aware of.

Senator DAVIS. Have you not applications of that sort in your office now?

Secretary GARFIELD. There may be in the Indian Office, but I have not had any of them brought to my attention, because I stated from the time that I became Secretary I would not permit selections to be made in that area until we could determine ultimately what ought to be done with it, and I do not know how many applications there are for selections within that area.

Senator DAVIS. Now, Mr. Secretary, House bill 15641 is an act for the removal of the restrictions from part of the land of the allottees of the Five Civilized Tribes, and for other purposes. Was that act prepared by or under your direction, or did it meet with your approval or sanction?

Secretary GARFIELD. I do not recall the bill by the number. If I can see the bill I can probably tell.

(The bill was here handed to the Secretary.)

Secretary GARFIELD. The original of this bill—whether it was exactly in the form as printed I do not now recall—but the original bill was drafted after a number of conferences between the members of the Oklahoma delegation, representatives of the Indians, and some officers of my Departments.

Senator SUTHERLAND. What is the bill?

The CHAIRMAN. It is the restriction bill.

Senator DAVIS. It was drafted, you say, after many conferences between the Oklahoma delegation and some officials in your office?

Secretary GARFIELD. And the representatives of the different tribes of Indians.

Senator DAVIS. Was it drafted after a conference with you individually?

Secretary GARFIELD. I was present at the conferences.

Senator DAVIS. That is what we want to know.

Secretary GARFIELD. I say after conference with me.

Senator DAVIS. Did this act meet your approval, and did you inspire the act?

Secretary GARFIELD. I did not inspire the act. It was drafted, as I have stated, and it did meet with my approval generally, but not in some particulars. It was a compromise measure.

Senator CURTIS. Maybe I can state that clearly. It is claimed, I do not know by whom, that you, Mr. Secretary, inspired the amendment offered by Senator Owen authorizing the State of Oklahoma to negotiate with the Choctaws and Chickasaws.

Senator DAVIS. No; with the Secretary.

Senator CURTIS. No; with the Choctaws and Chickasaws to purchase from the segregated coal and asphalt lands and this 1,300,000 acres of land that was reserved by Mr. Hitchcock. I will ask you to state to the committee if you recommended the adoption of any such amendment, or if it was prepared by you or in your office, or under your direction?

Secretary GARFIELD. It was not; I do not know by whom it was prepared.

Senator DAVIS. You know nothing of such an amendment as that?

Secretary GARFIELD. I have heard it discussed, but I know nothing of the origin of the amendment.

Senator DAVIS. You know nothing of it officially?

Secretary GARFIELD. Nothing officially; no, sir. The matter was discussed very fully at different times with the conference of the Oklahoma delegation as to what ultimately the State of Oklahoma might want to do with the segregated coal area and this forest area, provided the Indians sold it as an entirety.

Senator DAVIS. Do you state to the committee that it is not your purpose and not the policy of your office, if not restrained by Congress, to negotiate with the State of Oklahoma for the purpose of selling this land to the State of Oklahoma for forest reserve and a game preserve?

Secretary GARFIELD. I have no authority to do that without authority of Congress.

Senator DAVIS. Neither have you any authority that you can point out for withholding it from allotment.

Secretary GARFIELD. I think I have authority to withhold it from allotment.

Senator DAVIS. You said in answer to my question a moment ago that you could not recall any legal authority for that?

Secretary GARFIELD. I said that I did not recall any specific legal authority for withholding from allotment, but I supposed that it was within the general authority of the Secretary of the Interior as guardian of the Indian property to use it as best conserves the interests of the owners of that property.

Senator DAVIS. So it is not the purpose or the policy of your office to negotiate with the State of Oklahoma for the sale of this land?

Secretary GARFIELD. I have no authority to negotiate for the sale of the land.

Senator DAVIS. It is not a question of authority; it is a question of whether it is your policy to do it, or your purpose.

Secretary GARFIELD. I have stated to the members of the Oklahoma delegation that if the State of Oklahoma desires to purchase

the segregated coal area the way they should get at that is to make a proposition that may be submitted to Congress to the end that Congress may then determine whether it wishes to authorize the sale of that property.

Senator DAVIS. It is not so much the segregated coal land, Mr. Secretary, as it is the 1,300,000 acres of forest-reserve and game-preserve land. Is it your purpose and your object to negotiate with the State of Oklahoma for the sale of that land?

Secretary GARFIELD. It is not; I have never considered the proposition even of selling that to the State of Oklahoma. I have heard it discussed.

Senator DAVIS. There has never been a proposition made, has there?

Secretary GARFIELD. Not that I recall.

The CHAIRMAN. I have the exact language of the proposed amendment, if you desire it put in the record. This is the amendment referred to by the Senator from Arkansas [Mr. Davis]:

The State of Oklahoma is hereby authorized to negotiate with the authorities of the Choctaw and Chickasaw nations for the purchase of the segregated coal and asphalt land, and also for the land not required for allotment, and under the Choctaw and Chickasaw agreement, belonging to the said Choctaw and Chickasaw nations, and to conclude an agreement relative thereto, subject to the approval of Congress.

As it first read when it came before the Senate it was—

subject to the approval of the President.

Senator STONE. Mr. Chairman, I have an engagement with another committee, but right in this connection and while the Secretary is here, I was thinking about a discussion that we had about it in the committee and in the open Senate, and while I have not heard the Secretary's statement and shall not be able to, with regard to this matter, I desire to state that I dictated this morning a sort of tentative proposition to go in place of this provision which has just been read by you, and I will read it to you in the presence of the Secretary.

Senator DAVIS. Senator Stone, you are aware that the bill has already been reported?

Senator STONE. Of course, I am perfectly aware of that, and I know also that the amendment can be offered to the bill on the floor of the Senate.

Senator DAVIS. I thought you were going to offer it here.

Senator STONE. No; I was going to present it to the committee and leave it here for its consideration, and if the idea expressed in it was acceptable to the committee—I do not care about the language—then the chairman, or Senator Davis, or anyone who might be delegated for that purpose, can offer it by authority of the committee as an amendment. It is in reference, I will say, to the unallotted lands—not the other. It is as follows:

That it shall be unlawful for the Secretary of the Interior—

I do not know that you need put Secretary of the Interior especially, but in the haste of dictating it this morning I did—

That it shall be unlawful for the Secretary of the Interior or other executive officer of the Government to create, maintain, or continue for any purpose whatsoever, in a reservation of any land belonging to any of the Five Civilized Tribes, without express authority therefor, and all unallotted lands of said tribes, except coal and asphalt lands, which have been segregated under special provisions of law relating thereto, shall hereafter be open and subject to allotment on the selection of any of the persons entitled by law to allotments thereon.

Senator STONE. Now, after you have heard the Secretary and these other gentlemen, you may consider that that matter can be adjusted without resort to any legislative expression, but I simply wish to leave it with the committee for its consideration.

The CHAIRMAN. Very well.

Senator DAVIS. You say, Mr. Secretary, that it is not your object or purpose to negotiate with the State of Oklahoma for the sale of this land which has been withdrawn from allotment for game and forest reserves?

Secretary GARFIELD. It is not my purpose to negotiate with the State of Oklahoma for any of that land—either that or any other land.

Senator DAVIS. You have not been carrying on any negotiations up to date, have you?

Secretary GARFIELD. I have not.

Senator DAVIS. There has been no suggestion of that kind, has there?

Secretary GARFIELD. There have been propositions from the Choctaw and Chickasaw council having to do with the asphalt and coal land, but not, that I am aware of, having to do with the forest area in the southeastern part of the State.

Senator DAVIS. But you do think that you have a right to still continue to withdraw that forest land from allotment, although it is applied for?

Secretary GARFIELD. I think so.

Senator DAVIS. But you can not put your hand on any specific provision of law for that?

Secretary GARFIELD. I will have that looked up and see if there is any specific provision.

Senator DAVIS. Now, have you examined the report on that bill, in the present session of Congress, extending the provisions of the act of February 6, 1901, to all persons who claim rights in the common property of the Choctaw and Chickasaw Nation?

Secretary GARFIELD. I do not recall that I have, Senator. We have a great many of those bills to report upon. I do not recall it by number.

Senator DAVIS. I do not ask you in regard to it by number. I say have you reported on any bill proposing to extend the provisions of the act of February 6, 1901, as to the common property of the Choctaws and Chickasaws?

Secretary GARFIELD. I do not now recall. I will have the records looked up.

Senator DAVIS. The bill was reported by Senator Clapp. I will ask him to identify it.

Secretary GARFIELD. If the report has been made it will be here before the committee.

Senator DAVIS. You know, Mr. Secretary, as a matter of fact, that under the act of February 6, 1901, any Indian of the United States, or any person of Indian blood in the United States, may go into court and assert his right to citizenship in the Indian Territory, save and except the Five Civilized Tribes, do you not?

Secretary GARFIELD. I do not recall the exact provisions of that act. The act will speak for itself. I do not attempt to keep the provisions of these various acts in my mind.

Senator DAVIS. Now please examine this bill, Senate bill 5586, and see if you did not pass upon that bill, and if the object and purpose

of that bill was not to extend the act of February 6, 1901, so as to apply to the Five Civilized Tribes with the Choctaws and Chickasaws?

Secretary GARFIELD. As far as the question of my making a report on this is concerned, I will have to look up my records. Some reports are made by the assistant secretaries and some are made by me. There are so many reports that I do not keep all of them in my mind.

Senator DAVIS. Do you not recall that particular bill? [Handing bill to Secretary Garfield.]

Secretary GARFIELD. This, I think, is a combination bill—what was known as the removal of restrictions bill and the jurisdiction bill.

Senator DAVIS. There was a House bill, then, on the subject of jurisdiction, was there not, Mr. Secretary?

Secretary GARFIELD. I think so; there was one certainly recommended from the Department on the subject of jurisdiction.

Senator DAVIS. Well, on that bill enlarging the provisions of the act of February 6, 1901, to any person who claimed rights in the common property of the Choctaws and Chickasaws, did not your office make an adverse report on that bill?

Secretary GARFIELD. Not if it is the bill I have in mind. I did not make an adverse report on the jurisdictional bill, if that is the one you have in mind.

Senator DAVIS. I have in mind the bill to enlarge the provisions of the act of February 6, 1901.

Secretary GARFIELD. I do not recall it.

Senator DAVIS. And you say you do not recall the provisions of the act of February 6, 1901?

Secretary GARFIELD. Not exactly. I shall have to look that up and see what the bill was that we reported on.

Senator DAVIS. For your benefit I will state that under that law any person of Indian blood who claimed a right in an Indian estate, excepting only the Five Civilized Tribes, might bring a suit in court to assert his right to his division of the property, and that is the provision of the act of February 6, 1901. Now, if that is the provision, if I have quoted it correctly, can you see any objection to extending the provisions of that act to the Five Civilized Tribes?

Secretary GARFIELD. Well, I can not answer that offhand, for the reason that there has been so much legislation and litigation on the subject of the Five Civilized Tribes that I do not know where we would land if that act were made applicable. I shall have to look that up very carefully.

Senator DAVIS. Now, then, to be a little more explicit, can you give the committee any valid reason, or does any occur to you, why the Choctaws and Chickasaws that have not been permitted to be enrolled, whether they were left off by inadvertence or purposely, or otherwise—can you see any valid objection to their going into the court and contesting their right to be put upon the roll, or being permitted to do that by act of Congress?

Secretary GARFIELD. That I shall have to answer in a qualified way until I can look up all the laws relative to the Choctaws and Chickasaws, to see exactly what the state of the rolls is in relation to these particular nations. As you are aware, there has been a great deal of legislation that is conflicting in character, and there has been great difficulty in the matter. It has been very difficult in the

Indian Office and in the Attorney-General's Office to determine the relative bearing of these different statutes. Now, whether it would be the proper thing to extend that act as you indicate, I will have to look it up. My present impression is that it would not be a wise thing to take any action that would result in the reopening of the rolls which were closed by the act of Congress of March 4, 1907.

Senator DAVIS. It is not a question of the reopening of the roll; it is a question of asserting the right—if right they have—of persons who have been denied that right in the courts of the country. Do you think a man ought to be denied that right?

Secretary GARFIELD. That would be the reopening of the rolls Congress provided a method under which membership in those different nations and the right to be enrolled should be determined. By act of Congress those rolls were closed on a certain date. Now, if you reopen the rolls by giving persons who claim the right to be members or citizens, either through the courts, or by the establishment of another commission, or by giving to the Secretary of the Interior the right to pass upon this question, either one of those three methods would be a reopening of the rolls.

Senator DAVIS. You do not think that would be wise?

Secretary GARFIELD. I do not think it would be wise from the information I now have.

Senator BRANDEGEE. Supposing the provisions of those acts which provide for the final closing of those rolls, and the duties of the Government officials under those acts had not been properly performed by the officers who were to make the rolls, so that such persons had not had the right which Congress contemplated they should have—in that case would you not think that in the interests of justice the rolls should be opened in some cases to correct the errors of the Government officials, if there were any such errors?

Secretary GARFIELD. I feel about that, Senator Brandegee, in this way, that as I am advised by the office and from the study that I gave the matter during the last year, there are, without doubt, cases of individuals who have been left off the rolls who ought to be on, and there are cases of individuals on the rolls who ought to be off. It has been a very tedious and very long drawn out and complicated conditions of affairs to settle satisfactorily. From all that I have been able to learn any effort now to readjust or reopen the rolls to take care of the classes of applicants that were denied would involve really the reopening of the entire question of citizenship, and it is for that reason that I have felt that it was not wise for Congress to adopt any measure to afford a means for a redetermination or reinvestigation of the various classes of applicants whose claims were disallowed, either by the commission or the court, or the Secretary of the Interior, under the various forms that Congress has prescribed by the laws that were in existence prior to the closing of the rolls on March 4, 1907.

Senator BRANDEGEE. Let me ask you specifically about the case of the freedmen, if it is the fact that the freedmen with Indian blood in them were, in contravention of the statute and the provisions of that statute, compelled by the people who made up the roll to enroll themselves as freedmen whereas they are entitled to be enrolled as Indians. Do you not think that that injustice ought to be corrected, where those parties claimant are entirely innocent and where they

have been deprived of their property rights by the irregularities or failures to enforce the law on the part of Government officials?

Secretary GARFIELD. There again one becomes involved in a controversy that has existed, as I am told, for some years as to what the interpretation of that law was relative to freedmen enrollment.

Senator BRANDEGEE. But my question is if it was a fact that these parties by the failure of the Government officials to administer the law correctly—if it is a fact that they have been deprived of valuable property rights, would you not be in favor of correcting the injustice that was done to them?

Secretary GARFIELD. I should first want to know the exact character of the facts. Now, of course, in the statement as you put it, anyone would say that we would like to correct an injustice if it can be done. If in an attempt to correct that injustice you became involved in a litigation or became involved in administrative matters that would reopen a very complicated state of affairs you might thereby ultimately do justice to special claimants, but you might likewise do injustice to many others or might involve the administration of that particular fund or land in a greater difficulty. Under such circumstances you would have to balance the evil and the good and determine which would be the determining factor. My feeling has been, from a study of the freedmen cases, that more ill than good will result from an attempt to readjust or readjudicate these cases.

Senator DAVIS. Now, following up the question of Senator Brandegee, this enrollment was made by the Dawes Commission, was it not, largely?

Secretary GARFIELD. As to those details I am not familiar enough with them to state. I think you are right in that; but Mr. Ward, who will be here, I understand, has those things at his fingers' end.

Senator DAVIS. That question of itself is not so important as the one I now desire to ask you. A court known as the Chickasaw and Choctaw citizenship court was established down there, was it not?

Secretary GARFIELD. It was; yes, sir.

Senator DAVIS. Can you give us the names of the judges composing that court?

Secretary GARFIELD. I think there was Judge Weaver, Judge Adams, and a judge—the man who is now dead; I have forgotten his name.

Senator DAVIS. Well, at any rate, has it not been persistently alleged that the members of that Choctaw and Chickasaw citizenship court were bribed to render decisions denying nearly 4,000 persons of Indian blood to share in this property?

Secretary GARFIELD. I have heard allegations of that kind.

Senator DAVIS. Do you not know that that allegation has been made to you directly, and that you took it down, or had it taken down by stenographers in your office?

Secretary GARFIELD. I know that allegations have been made to me directly; yes, sir.

Senator DAVIS. By whom?

Secretary GARFIELD. A man named Mr. Rosenwinkle. I made a report to the Senate in accordance with a resolution passed by it, asking for information with regard to that matter.

Senator DAVIS. But did Mr. Rosenwinkle report with you to the attempted bribery or the bribery of judges of this citizenship court?

Secretary GARFIELD. Well, I would prefer that you should call Mr. Rosenwinkle himself for information as to that. He gave very much that was hearsay.

Senator DAVIS. Just give me a brief synopsis of it.

Secretary GARFIELD. I really can not do it. It occurred three months ago.

Senator DAVIS. Did you not give a synopsis of that to the subcommittee that was sent to interview on the 16th?

Secretary GARFIELD. Yes, sir; I told you generally what it was.

Senator DAVIS. Please do that again.

Secretary GARFIELD. The general statement, as I remember, was to the effect that he made charges that the members of this court had been guilty of misconduct.

Senator DAVIS. You can give a more specific statement of that, can you not?

Secretary GARFIELD. I think not; and furthermore, I do not care to repeat the casual allegations that have been made either by Mr. Rosenwinkle or other parties in connection with this and other matters. Mr. Rosenwinkle stated that it was mere hearsay; that he knew nothing about it himself, and I declined to give it any consideration, and I do not care to even attempt to repeat or to be held even responsible for the repetition of charges of that character.

Senator DAVIS. I do not care to have you give any casual expression of Mr. Rosenwinkle or anybody else; but I insist that you give to the committee, as nearly as your memory will serve you, the facts and circumstances relating to this bribery, or attempted bribery, which you took down in your office or was taken down by your stenographers.

Secretary GARFIELD. And that, Senator Davis, I will decline to attempt to do.

Senator DAVIS. Have you a copy of that stenographic report?

Secretary GARFIELD. I have a copy of a few pages that I dictated myself.

Senator DAVIS. Will you be kind enough to furnish that to the committee?

Secretary GARFIELD. I will not.

Senator DAVIS. Why not?

Secretary GARFIELD. Because it is simply a memorandum of the merest hearsay that Mr. Rosenwinkle gave to me and which I declined to consider, and which he declined to verify, and which he declined even to sign, or have anything to do with after making his statement, and I dismissed it from my mind as being a matter unworthy of further consideration.

Senator DAVIS. Now the question as to whether or not it is unworthy of consideration might appeal to you one way and it might appeal to the committee another way. You positively decline to give us that information, do you?

Secretary GARFIELD. I do.

Senator DAVIS. Very well, if you want it to rest at that.

Secretary GARFIELD. I decline for the reason I have stated. I say that Mr. Rosenwinkle is the one who can give exactly to you what he

has given to me, and if the committee considers it of sufficient importance to proceed further, why, of course, that is for the committee to say.

The CHAIRMAN. Mr. Secretary, did Mr. Rosenwinkle at that time offer to make this statement over his own signature?

Secretary GARFIELD. He declined to do that. I asked him specifically if he would sign the statement that he was making and he declined to do it.

Senator DIXON. Senator Davis, who is Mr. Rosenwinkle; where does he live?

Senator DAVIS. I do not know, I am sure. I do not know where he lives. I got this information from the Secretary himself. It was a voluntary statement of his.

Senator BRANDEGEE. May I ask a question? Do I understand you to say, Mr. Secretary, that Rosenwinkle's complaint to you were charges that were entirely uncorroborated?

Secretary GARFIELD. Absolutely uncorroborated, and he stated himself at the time that he knew nothing personally about them; that he could not attempt to prove them, and they were the same character of statement, I am told, that had been current for the last two or three years in the Indian Territory and here in Washington.

Senator BRANDEGEE. Do I understand you to say that he told you that it was simply hearsay or rumors and that he had no evidence as to the facts whatever?

Secretary GARFIELD. He did; and he had no evidence whatever to support the statements. He said that he himself must not be known in it, and he declined to make good in any way.

Senator BRANDEGEE. Did he mention to you the names of any of the fellows who could furnish the information?

Secretary GARFIELD. He did.

Senator DAVIS. Who were they?

Secretary GARFIELD. Those he can give you if he wants to come before you.

Senator DAVIS. Do you decline to give them?

Secretary GARFIELD. I decline to repeat what Mr. Rosenwinkle said to me.

Senator DAVIS. Why do you decline?

Secretary GARFIELD. For the reason that he made the matter as a pure hearsay statement and declined to back it up in any way whatever.

Senator DAVIS. Did you investigate the source of the information that he gave you, as to whether he was telling the truth or a falsehood?

Secretary GARFIELD. I saw that I could not get any information that was of the slightest value.

Senator DAVIS. Did you have before you the parties whose names he suggested to you?

Secretary GARFIELD. They were out of the country. One was out of the country.

Senator DAVIS. Who were the others?

Secretary GARFIELD. I do not know; I do not recall.

Senator DAVIS. Did you try to find out who they were?

Secretary GARFIELD. I tried to find out who they were and what they were.

Senator DAVIS. Mr. Rosenwinkle was an employee in some official capacity of that citizenship court, was he not?

Secretary GARFIELD. I do not know. My impression was that he was not. I think he said he was employed by the firm of Mansfield, McMurray & Cornish.

Senator DAVIS. And the information which he claimed to have heard about it, or claimed to have had, if he had any, he got while in the employ of Mansfield, McMurray & Cornish?

Secretary GARFIELD. That I do not know.

Senator DAVIS. Where did he claim to get it from?

Secretary GARFIELD. I think he claimed to get it from there.

Senator BRANDEGEE. Let me understand that. Did Mr. Rosenwinkle say that at the time he was talking with you that he was still in the employ of Mansfield, McMurray & Cornish?

Secretary GARFIELD. I think not.

Senator BRANDEGEE. He was a former employee, was he?

Secretary GARFIELD. He was a former employee.

Senator BRANDEGEE. Did he say as to what period, as related to these charges about which he made charges, he had been employed?

Secretary GARFIELD. I do not recall what he stated about that.

Senator DAVIS. Is Mr. Rosenwinkle in the city now?

Secretary GARFIELD. I do not know. I have never seen him since the evening he came to my office.

Senator DAVIS. Then why do you say to the committee that we can call him before us?

Secretary GARFIELD. I imagine that you can get him.

Senator BRANDEGEE. Do you know his present address?

Secretary GARFIELD. I do not.

Senator BRANDEGEE. Did he leave any address with you?

Secretary GARFIELD. He did not.

Senator DAVIS. Do you know any clew by which we could get his address?

Secretary GARFIELD. I noticed in the papers when this matter came up in the Senate by resolution that Mr. Rosenwinkle was reported to have made the statement to one of the western newspapers—I have forgotten what paper it was——

Senator DAVIS. Mr. Secretary, do you know—if not personally, officially—of one William C. Beall, who is an official of the Commission to the Five Civilized Tribes?

Secretary GARFIELD. I do not recall the name.

Senator DAVIS. Do you not know that in the month of June, 1903, and are not these facts shown by the records of your office, that this man Beall, who was a former member of the Commission, who was discharged from the Commission, or withdrew from the Commission temporarily, if not discharged, and went into the office of Mansfield, McMurray & Cornish, who were attorneys employed to keep people off the rolls that were not entitled to admission, and briefed cases, and that he afterwards returned to the Commission that sat upon and determined cases which he himself had briefed in this law office?

Secretary GARFIELD. I do not know of that; no, sir.

Senator DAVIS. Is not that shown by the records of your office?

Secretary GARFIELD. It may be; I have not had occasion to watch.

Senator DIXON. What year was this?

Senator DAVIS. In 1903.

Senator DIXON. Mr. Secretary, that was years before you took charge of the Department?

Secretary GARFIELD. Yes, sir; the records will show for themselves. I will have them looked up.

Senator DAVIS. In the examination of Mr. Bixby did not the examination show——

Senator DIXON. The examination before whom?

Senator DAVIS. The select committee, of which you were a member, Mr. Brandegee:

In the Beall investigation, I refer respectfully to my report, pages 8, 9, 10, and 11. These are matters which incidentally relate to the conduct of Mr. Bixby, as well as of Mr. Beall, which I think ought to be brought to your notice and an explanation requested from Mr. Bixby. Mr. Bixby knew that Mr. Beall had been employed by the firm of Mansfield, McMurray & Cornish; that while in their employ he had been working on certain cases pending in the Choctaw and Chickasaw citizenship court; that those cases were afterwards brought into the Commission; that Mr. Beall initialed them and passed upon them to a certain degree, as he testifies. In point of fact Mr. Beall passed upon some of them in a judicial capacity, which was highly improper. If Mr. Bixby did not know it he ought to have known it and prevented Mr. Beall from taking any part with regard to them.

You say that you do not know that the records of your office show those facts?

Secretary GARFIELD. I have never had it called to my attention. I can find out what the records show. They will speak for themselves.

Senator SUTHERLAND. Senator Davis, what are you quoting from?

Senator DAVIS. I am quoting from the findings of Mr. William T. Foulk, who was sent as a special agent to investigate this matter.

Senator BRANDEGEE. Beall was not a member of the Commission, as I remember it, Senator; he was an employee.

Senator DAVIS. I thought at one time he was a member of the Commission.

The CHAIRMAN. Oh, no.

Senator BRANDEGEE. My impression is that he was not, but I am not sure about that. I state that because I understood you to ask the Secretary if he was not a member.

The CHAIRMAN. He never was a member. He was an employee.

Senator DAVIS. Do you not know that this same man Beall determined the rights of many claimants to this property under bills pending in Congress, as is shown by the official records of your Department?

Secretary GARFIELD. I have never had occasion to examine those records, and I do not know.

Senator DAVIS. This report of Mr. Foulk, of course, speaks for itself.

Secretary GARFIELD. Whatever the report is, of course, it will speak for itself.

Senator BRANDEGEE. Were you Secretary of the Interior at the time Foulk went down there and made this investigation by order of the President?

Secretary GARFIELD. No, sir; I was not; that was before my time.

Senator DAVIS. Do you not know that there are lists of persons whose claims to enrollment were favorably decided by officers of your

Department, and through inadvertence or mistake they were not enrolled and thereby deprived of their property?

Secretary GARFIELD. I do not. I know of one list, I think, of 52, who were reported by the Commissioner of the Five Civilized Tribes, Mr. Wright, as having been inadvertently left from the rolls.

Senator DAVIS. Do you not know that within a week prior to midnight of March 4, 1907, Secretary Hitchcock summarily struck from the rolls more than 2,000 names that had already been passed upon and already enrolled?

Secretary GARFIELD. I know that Secretary Hitchcock did, in accordance with the opinion of the Attorney-General, strike off a number of names, I think about 2,000—I do not recall the exact number—after the opinion of the Attorney-General, which I think was rendered in the middle of February, 1907, and that action was taken between that time and the 4th of March, 1907, when the rolls closed.

Senator DAVIS. Do you not know that Secretary Hitchcock examined 2,023 cases, which embraced the rights of more than 10,000 people, within less than a week prior to the 4th of March, 1907?

Secretary GARFIELD. I do not know what Secretary Hitchcock did at that time.

Senator DAVIS. Do not the records of your office show?

Secretary GARFIELD. The records will show what action was taken. I do not know personally.

Senator DAVIS. Does not the record show that he examined 2,023 cases within a week?

Secretary GARFIELD. I do not know. I will have to look that up and see what action was taken.

Senator DAVIS. Will you look that up and let us know at a subsequent hearing?

Secretary GARFIELD. I will look it up; yes, sir.

Senator McCUMBER. Did we not have that a week ago when the exact number was stated at a hearing?

Senator DAVIS. I do not think so. Mr. Ward did not seem to know; he hesitated about it.

Senator McCUMBER. My recollection is that he did.

Secretary GARFIELD. Mr. Ward, who has charge of these matters, can give you very accurate information upon the subject.

Senator SUTHERLAND. Mr. Ward testified, as I remember, very thoroughly about that. He testified that in some of the cases they had advance information, so that they were able to give them attention prior to the beginning of this week which he speaks of.

Senator McCUMBER. He gives the whole number, something over eighteen hundred, as I remember it

Senator DAVIS. Perhaps so. Now, Mr. Secretary, if the courts hold that your Department had no authority of law to strike the names of those 2,000 or more persons from the roll after their enrollment had been approved by the Secretary, is it the policy of yourself to insist that it will be necessary for each of those persons to bring a separate suit in order to secure their property?

Secretary GARFIELD. I have no policy about it. I shall wait until the court determines.

Senator DAVIS. Has that been your attitude expressed—your official expression?

Secretary GARFIELD. I have given no expression about that. I have stated that when the court determines what the rights of these parties are, that of course the orders of the court will have to be carried out, whatever they may be.

Senator DAVIS. Did you not recommend to Congress the inclusion of a provision in the Indian appropriation bill authorizing you to approve contracts made with attorneys, and making said contracts a lien upon the lands and funds of the claimants, said contracts being entered into for the purpose of securing the claimant's name on the roll, when the courts have held that to-day it was legally thereon and has never in law been stricken off?

Secretary GARFIELD. Your question is a complicated one. I can answer it in two ways.

Senator DAVIS. I will separate it. Did you not recommend that there be included in the Indian appropriation bill a provision that you be permitted—not yourself, personally, but the Interior Department—to be permitted to make contracts with the attorneys for bringing these suits, or for the establishment of the rights of those people, if any rights they had, and that this contract, if approved, should be a lien upon their property and their estate?

Secretary GARFIELD. I think that was one of the provisions in the Indian bill that was approved by the Indian Office.

Senator DAVIS. Did you not recommend that?

Secretary GARFIELD. I think I did. The record will show for itself.

Senator DAVIS. Do you not remember anything about this matter at all?

Secretary GARFIELD. I remember a good many things; yes, sir.

Senator DAVIS. Do you not remember that fact?

Secretary GARFIELD. My impression is that that amendment was subject to various subamendments, and I do not recall the exact language in which it was recommended by the office.

Senator BRANDEGEE. The testimony of Mr. Ward as to the number of names which were examined by the Secretary in that week, to which Senator Davis referred, is to be found on pages 12 and 13 of the hearings of the committee, dated April 23.

Senator DAVIS. Now, Mr. Secretary, what object had you in making that contract a lien upon the Indian's property?

Secretary GARFIELD. I shall have to look up the entire proposition that came from the attorneys and see what the facts were in that case. These various cases that have been brought and now pending, some of them for the purpose of reestablishing the rights of these people, as claimed for them, and it was my hope that all the cases might be settled by the decisions of one or two, as indicating the class of cases that were claimed. As for the reason for this action, my impression is that Mr. Hastings, I think, who is the attorney for one of the tribes there, who had that matter immediately in hand, brought that matter to my attention, but I am not sure about that. Originally my purpose was to try to avoid having the Indians charged any more than was absolutely necessary for the determination of their cases before the Supreme Court. I think it was afterwards found that some attorneys were endeavoring to get contracts with these various claimants, running up to as high as 40 or 50 per cent of the amount that might be claimed, and it was my hope that I might so arrange

the contracts with these various attorneys to the end that the amount that they would obtain would be very much less than was suggested by certain attorneys outside, if the Secretary could control the question of these contracts, and limit them to a fair amount—a fair per cent, and insure that that per cent would be paid out of the fund finally obtained; that it would be very much better for the interest of those Indians, if they were entitled to enrollment or reenrollment—having once been stricken off—and that was the purpose of that legislation as recommended.

Senator DAVIS. Now, in this case where the Secretary struck off, say, 1,800 names or 2,000 names, whatever it was—after the rolls had been completed—that question is being litigated now, is it?

Secretary GARFIELD. It is now being litigated; yes, sir.

Senator DAVIS. As to the right of the Secretary to do that?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. Has not the Department of Justice notified your Department that this case can not be maintained in the court?

Secretary GARFIELD. There have been different opinions rendered on that. I do not recall what the last opinion of the Department of Justice is.

Senator DAVIS. Just answer the question. Has that opinion ever been given to your Department, that these suits can not be maintained, and that you had just as well go on and enroll those people?

Secretary GARFIELD. My impression is that some of the attorneys in the Department have expressed an opinion; yes, sir.

Senator DAVIS. Has not that opinion been given to you and signed by the Attorney-General, Mr. Bonaparte?

Secretary GARFIELD. I do not know, but I will look that up and see what opinion has been rendered on that subject. I can answer, as far as that is concerned, that as the representative of the Indians that that is a question that can only be fairly and finally determined by the action of the Supreme Court, and it has been my recommendation that these cases be carried to the Supreme Court.

Senator DAVIS. Well, the Department of Justice, in legal matters, ranks your Department, does it not?

Secretary GARFIELD. Not necessarily.

Senator DAVIS. Then you put your opinion against the opinion of the Department of Justice as to legal questions?

Secretary GARFIELD. I might.

Senator DAVIS. Well, do you in this instance?

Secretary GARFIELD. I do not know what the official opinion of the Department was—that these cases should be pressed or not.

Senator DAVIS. Will you look that up?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. By what title does the Choctaws and Chickasaws hold their land; is it a fee-simple title in which the Government does not claim any right or interest whatever in the land?

Secretary GARFIELD. I do not recollect what the basis of that title is.

Senator DAVIS. Have any of the members of the Choctaw and Chickasaw nations been refused a selection under the common land of the Choctaws and Chickasaws as their allotments because of any withdrawal of said land for the purpose of including the said land in a forest reserve or game preserve?

Secretary GARFIELD. As I have stated before, I declined to allow such selections to be made in that area and in the southeastern portion of the State for the purpose of presenting ultimately to Congress a plan by which I think that area can be best utilized.

The CHAIRMAN. Just a moment. Is there sufficient land outside of that area to have met any request for allotment that has been approved?

Secretary GARFIELD. I so understand.

Senator DAVIS. But you can not give us the total number of acres of the unallotted land of the Choctaws and Chickasaws, including this land?

Secretary GARFIELD. I can give it to you when I get the records. I have not got it in my head at the present time.

Senator DAVIS. As a matter of fact, do you not recall, Mr. Secretary, that there is a very small portion of land left after excluding this forest reserve and game preserve that you speak of?

Secretary GARFIELD. No, sir; I do not recall the acreage.

Senator DAVIS. Do you not recall that it is a very small quantity of land that would be a very small amount that will be left?

Secretary GARFIELD. I do not recall what amount it is, whether it is small or large.

Senator DAVIS. Is it your purpose and your intent to sell and dispose of the unallotted land of the Choctaws and Chickasaws as soon as allotments have been made to the persons whose names appear on the roll as citizens and freedmen of the nation, as approved by your predecessor, and to distribute the proceeds derived therefrom among the persons so enrolled to the exclusion of the blood citizens who have been denied enrollment?

Secretary GARFIELD. My purpose is to carry out the law, whatever it may be.

Senator DAVIS. You say your judgment in any case outranks that of the Department of Justice. Which shall we depend upon, your opinion or that of the Department of Justice?

Secretary GARFIELD. You shall have to depend upon the Secretary of the Interior for the enforcement of the laws committed to his charge.

The CHAIRMAN. Let me ask a question for information. Each Department, or speaking more especially with reference to your own Department, has its specific duties. It is within the province of your Department to say whether suit shall be brought or not, and it then becomes the duty of the Department of Justice to prosecute the suit; is that not so?

Secretary GARFIELD. Yes, sir; you are quite right. The Department of Justice acts upon the recommendation of the Secretary of the Interior, and where there is a conflict of opinion as to whether or not a suit can be successfully maintained, the Department of Justice would of course act upon the request or advice of the Department of the Interior in a case of that character.

Senator MCCUMBER. You have legal advisers for your own Department in addition to that, have you not?

Secretary GARFIELD. We have; yes, sir.

Senator BRANDEGEE. Let me ask you a question for information. Can it be said to be the general rule of your Department or your general course of action, that where you have submitted a legal question

to the Attorney-General of the United States you generally follow his opinion?

Secretary GARFIELD. Ordinarily; yes, sir.

Senator BRANDEGEE. Do you recall any instance in which you have not done so?

Secretary GARFIELD. Quite a number; yes, sir. In matters involving litigation, where the Attorney-General would render an opinion upon the report of the district attorney, or upon one of the officials of his Department, where the evidence was not sufficient to warrant a proceeding he would recommend that the suit either be dismissed or not brought, and I, if after going over the facts as we saw them, and taking the law as we interpreted it, felt that it was still a wise thing to bring the suit we began the litigation with that request, that under those circumstances the case be tried.

Senator DAVIS. I do not mean to inquire as to the exercise of a discretion, or what the chances of winning the case may be, but as to what the law was in a particular case—whether you in certain instances had more confidence in your own opinion or that of your own legal advisers as to what the law was, than you had in the opinion of the Attorney-General.

Secretary GARFIELD. Ordinarily, of course, the opinion of the Attorney-General would be followed in all matters of that kind.

Senator DAVIS. I was asking whether you remember any instance in matters of that kind where it would not be followed?

Secretary GARFIELD. I do not remember any formal instance. There are many instances of an informal discussion, where we would take up a matter with the Department of Justice, and they would give as their informal opinion a certain proposition.

Senator DAVIS. I mean where you have an opinion in writing?

Secretary GARFIELD. I do not recall now any instance.

Senator SUTHERLAND. But you regard the opinion of the Attorney-General as advisory and not as controlling, as I understand?

Secretary GARFIELD. Yes, sir; there are certain cases in which I would consider them as controlling, but ordinarily they are advisory.

Senator DAVIS. Do you not know, as a matter of fact, that you have in your office now a legal opinion from the Department of Justice, signed by Mr. Bonaparte himself, that you can not maintain these cases where the Secretary of the Interior struck these names off after the rolls had been completed?

Secretary GARFIELD. I think there is an opinion of that kind, but I would like to look it up.

Senator DAVIS. Are you following that opinion or disobeying it?

Secretary GARFIELD. I am trying these cases through the Supreme Court.

Senator DAVIS. Regardless of the opinion that you can not maintain them?

Secretary GARFIELD. Whatever his opinion is, it will speak for itself.

Senator DAVIS. You do not answer me specifically with regard to your present intention as to the unallotted land of the Choctaws and Chickasaws. Is it your intention to sell that land and divide the money derived therefrom among those who have been classed as citi-

zens, according to the roll, independently of the rights of those people who are litigating?

Secretary GARFIELD. No; I do not think that the property should be disposed of until we know what persons are entitled to the proceeds of that property, or entitled to the distribution of it. That is one of the difficulties in the opening of the rolls.

Senator CURTIS. In fact, have you not declined to recommend a distribution of tribal property among the tribes because the question has not been settled?

Secretary GARFIELD. I have; I said it ought not to be wholly distributed; that there should be a balance left to take care of those who may ultimately be entitled to a share in the proceeds.

Senator DAVIS. Have you ever reported to Congress the rolls of these people who have been denied enrollment as citizens of blood in order that Congress might approve by proper legislation for the correct enrollment of said blood citizens?

Secretary GARFIELD. I think no recommendation has been made.

Senator DAVIS. Why have you not made a recommendation?

Secretary GARFIELD. Because I have no personal belief that those names that were stricken off were improperly stricken off. That is a matter for the court to determine. It is not a question that I have imagined would be subject to legislative action at the present time. If the court determines that those names were properly stricken off that ends it, and if it determines that the names shall be left on that ends it, and they will go back on the rolls.

Senator DAVIS. Well, if the court determined that they were improperly stricken off they are still on there?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. And never have been properly stricken off?

Secretary GARFIELD. Quite right.

Senator DAVIS. Did you recommend the following section to be added to the House bill with reference to the removal of restrictions on allotted land that I showed you a moment ago?

SEC. 3. That the rolls of citizenship and of freedmen of the Five Civilized Tribes, approved by the Secretary of the Interior, shall be conclusive evidence as to the age and the quantum of Indian blood of any enrolled citizen or freedman of said tribes to determine questions arising under this act.

Secretary GARFIELD. That is quite right; I did.

Senator DAVIS. You recomended that?

Secretary GARFIELD. I did.

Senator DAVIS. Did you realize when you recommended that provision in this bill that those rolls were made largely by a citizenship court down in the Territory?

Secretary GARFIELD. I realized thet they had been made in accordance with the law, whatever the law was—some by the citizenship court and some by the action of the Department.

Senator DAVIS. Did it occur to you that perhaps any fraud had been perpetrated by this citizenship court in making up this roll?

Secretary GARFIELD. It did not.

Senator DAVIS. Did it ever occur to you that those rolls were made up so as to enroll persons who were of real Indian blood, as of mixed Indian blood between Indians and negroes?

Secretary GARFIELD. I was not aware of any fact of that kind.

Senator DAVIS. Do you not know that it appears in the report of the select committee—and have you not examined it (I refer to page 1521) that the McGee family was composed of ten children, born of the same father and mother, and nine of them are recorded by that court or by the Commission as nigger Indians, and one of them as an Indian. Were you cognizant of that fact?

Secretary GARFIELD. I do not recall that I have ever looked at that case.

Senator DAVIS. Well, do not the records of the Department and of your office show that a great many cases have been erroneously enrolled as nigger Indians where they were to be enrolled as real Indians. Were you not so advised?

Secretary GARFIELD. No, sir.

Senator DAVIS. Does not that instance there show it?

Secretary GARFIELD. It may, and it may not. I shall have to give the records careful consideration to see what was done in each case, where it was an allegation either of freedmen or negro blood.

Senator DAVIS. Now, under the provision of section 3, making these rolls conclusive as to the degree of blood, a person enrolled as a nigger Indian or an Indian mixed with negro blood would only get 40 acres of land as a homestead, would he not?

Secretary GARFIELD. Whatever the law provides the negro gets.

Senator DAVIS. Do you not know what it provides?

Secretary GARFIELD. I do not attempt to carry the various provisions of all these laws in my mind. I think the negroes get 40 acres.

Senator DAVIS. Do you not know that?

Secretary GARFIELD. That is my impression. I am not accustomed to speak with positiveness as to statute law without having it before me.

Senator DAVIS. But these are matters of the purest elementary principles involved in your office.

Secretary GARFIELD. Yes, sir; I understand.

Senator MCCUMBER. If I may interject a statement, you may recall the fact that the Secretary of the Interior has not only all matters relating to Indian affairs under his charge, but has tens of thousands of other matters in his Department, and it will be impossible to keep them all in his mind.

Senator OWEN. And the question implies a matter that is not really true.

Senator DAVIS. I think the Secretary ought to know the elementary matters connected with his office.

Senator OWEN. The ordinary freedmen, instead of having 40 acres, has really but the equivalent in value of 40 acres of land. It may be only 20 acres.

Senator DAVIS. He does not have more than 40?

Senator OWEN. He may have more than 40.

Senator MCCUMBER. It has to be appraised according to valuation and he would be given an amount of land that would be an equivalent in value to 40 acres.

Senator DAVIS. Then the real Indian, the person of real Indian blood, who has no nigger mixed with him, gets a homestead of 320 acres, does he not?

Secretary GARFIELD. In some instances the Indian gets a homestead of that amount, and in some cases more or less. It is the value

of the property rather than the actual acreage. It will differ in some instances from others.

Senator DAVIS. Then do you think it is fair to have this provision incorporated in this bill making the rolls the conclusive evidence as to the quantum of blood?

Secretary GARFIELD. I think it is the only way that you can finally wind up the affairs of this nation.

Senator DAVIS. Are you more interested in winding up the affairs than in administering exact justice to those people who are the wards of the nation?

Secretary GARFIELD. I am not; I am interested in both. We have attempted to take care of both those interests in the recommendations that we have made. I have no doubt that the bill as finally reported by Congress will be a much better bill than that that was first submitted, as in all cases of that kind there are points that come up after careful, painstaking, and intelligent investigation, such as has been given here, which will show the weakness of any bill that is brought up. I am advised that the bill reported is a very much better bill than the bill we agreed upon after conference with the Oklahoma delegation. I have no doubt that you will find in that bill clauses that can be very materially improved upon. I do not for a moment stand upon the proposition that that bill, or any other bill that I have recommended, is a finality, in endeavoring to get the facts in such shape that we can deal with the greatest justice and the greatest expedition in the settlement of the land that we own of these various Indian tribes.

Senator SUTHERLAND. As I understand, Senator Davis, section 3 of this bill makes the rolls conclusive evidence as to the quantum of blood and the age of the Indians simply as to and only as a question arising under this bill.

Secretary GARFIELD. That is correct; yes, sir.

Senator SUTHERLAND. Only upon the question of the removal of restrictions. It does in any manner prevent any person upon the roll in any other kind of action from contesting that question. He is not concluded by the roll in any other sort of case.

Senator DAVIS. But as to these people who are not included in the roll, how does it affect their rights?

The CHAIRMAN. It has nothing to do with them.

Senator SUTHERLAND. When any man upon the roll undertakes to sell his land upon the theory that the restrictions have been removed, he is bound then by the rule fixing the quantum of blood and age. I think very properly that that should be so.

Senator DAVIS. Well, lawyers very frequently disagree about the construction of statutes.

Senator BRANDEGEE. Recurring to the matter of which Senator Davis has been speaking, about this forest and game preserve there, how many acres does that comprehend?

Secretary GARFIELD. Something over a million; I have forgotten the number of acres. The Senator had it in the report.

Senator BRANDEGEE. As I understand it, that was ordered by Congress to be allotted to the Indians, was it not?

Secretary GARFIELD. That was a part of the general tribal fund. There was no distinction made by the act of Congress between that area and any other area.

Senator BRANDEGEE. And, if my recollection serves me, it was Secretary Hitchcock who withdrew that from allotment?

Secretary GARFIELD. It was; yes, sir.

Senator BRANDEGEE. There has been no reversal from his action by you since you have been Secretary, has there?

Secretary GARFIELD. None whatever. I have simply carried on that same policy of not allowing the selections to be made there.

Senator BRANDEGEE. In pursuance of that policy have you taken the advice of the Attorney-General of the United States?

Secretary GARFIELD. I have not.

Senator BRANDEGEE. Have you taken the advice of the Assistant Attorney-General for the Interior Department?

Secretary GARFIELD. I have.

Senator BRANDEGEE. Does he advise you that you had authority?

Secretary GARFIELD. He advised me that I have authority to do this.

Senator BRANDEGEE. I mean legal authority.

Secretary GARFIELD. Yes, sir; under the general authority that I have as administrator of the affairs of the Indians. Senator Davis asked me if I had any specific authority. I said that I did not recall any, but that I would look it up; that it came under the general authority of the Secretary of the Interior over the lands of the Indians.

Senator BRANDEGEE. I understood that it was your present purpose ultimately to present some proposition to Congress looking to the utilization of that land that would be better for them than for allotment purposes.

Secretary GARFIELD. Yes, sir; I took that up with representatives of the Indians when I was in Oklahoma last summer, and I discussed it with various Members of the House and Senate, my belief being that that area, being a very largely wooded area, could be sold to very much better advantage than it could be allotted, and that the proceeds of sale should be divided among the persons entitled on the roll and that they would get more out of it than they would by having it allotted to them in the smaller areas, and they then disposing of it, as they might be able to in small amounts, for the timber that was upon it. Now, there is of course a diversity of opinion as to that. Some of the Indians say, "We would rather take it and have it wound up;" there were a number of others who would say, "We would like to have it handled in that fashion, just exactly as the segregated coal area has been handled." It is the same proposition of the segregated coal area. I have discussed that very fully with the representatives of the two nations in Oklahoma. There is likewise a diversity of opinion among them as to how that should best be handled, whether it should be kept and leased by the Federal Government and the proceeds of the leases turned over to the Indians in accordance with whatever law Congress might pass, or whether it should be sold, either to the State or to private parties, or whether the improvements and the surface of the land should be separated from the coal. All of those are questions which I have felt we were not ready to settle at this time as well as we could settle them later.

Senator BRANDEGEE. Can you give the committee any idea about the length of time that you mean to indicate by the use of the word "ultimately" as to this forest reserve?

Secretary GARFIELD. I hope by the time that Congress gets together next year that we will have this question of litigation out of the way so we will know where we stand on the final make-up of the roll; that then we will have fixed the number of the people and the names of the people who are entitled to the ultimate distribution of the property. We will then know a great deal more about the character of the wood and timber that is on that area, and we can then make a definite recommendation to Congress as to what its appraised value should be, and if Congress sees fit they can make an appropriation to buy it from the Indians and create a forest reserve of it, or, if the Indians see fit, they could sell the land in a lump, either to individuals or to the State. A great portion of that land is land that is not fitted for homestead or agricultural development, and if an Indian gets 160 or 360 acres, or whatever it may be, in that area, he will be under serious disadvantages in attempting to dispose of it.

Senator BRANDEGEE. As to the advice that your Assistant Attorney-General gives you as to your exercise of the discretion to withhold the land from allotment, when the act of Congress prescribes that you should go ahead and allot it, are you able to distinguish between the exercise of your discretion in that respect and the suspension of an act of Congress by you?

Secretary GARFIELD. I have acted in that matter in this way, that in this question the Secretary of the Interior, as guardian, must exercise and have a really broader discretion than he would have under ordinary circumstances. I do not find, as I recall the act—and there again I am speaking without having it before me—that there is a positive provision of the statute that requires that these allotments be made at any given time, and that it is under that general provision that the Secretary may use his discretion. Now, if in some way I should find that there was fraud being perpetrated, or anything of that kind, I could withhold any specific allotment for that reason.

Senator BRANDEGEE. I think you could undoubtedly in case of fraud. My recollection about this case, however, is that Secretary Hitchcock in his testimony last year did not claim that there was any question of fraud in relation to this particular thing.

Secretary GARFIELD. Not at all. I simply refer to that as a question of discretion.

Senator BRANDEGEE. Now, as guardian, do you consider that your Department—the Government being guardian of the Indian—has any right or duty as guardian except as Congress authorizes or imposes?

Secretary GARFIELD. Oh, none whatever. It comes wholly within the Congressional authority, whatever that may be. I think, Senator, that there was a misapprehension last year, although I have not read Secretary Hitchcock's testimony before the committee for a year; but I think at that time in his testimony before the committee it was supposed rather that this was a withdrawal under the forest act, which of course it was not. There was no attempt to create a national forest, or a forest reserve, and that was a misapprehension that is found to exist in the minds of some Members of Congress, that the Secretary of the Interior had attempted to create a forest reserve out of this Indian land. Of course that could not be done, because as I understand the Indian title there it is quite different from the Indian title under the reservations outside of the Indian Territory.

Senator BRANDEGEE. There was no confusion in my mind as to the situation at that time, though I think you are correct in stating that there was some confusion in the mind of the Secretary of the Interior and some of the witnesses. You claim, as I understand it, that although the statute makes no distinction between this land that may ultimately be made a forest reserve there, which has been reserved from allotment or at least upon which you declined to entertain a proposition for allotment.

Secretary GARFIELD. Yes, sir.

Senator BRANDEGEE. And the other land; it was all treated the same?

Secretary GARFIELD. It was all treated the same under the statute, as I understand.

Senator BRANDEGEE. And the question is whether Congress contemplated when it threw it all open to allotment that there should be a continuous process of allotment, and if any person did apply for allotment on this tract it should be granted, or whether you could control a portion of it and make an allotment upon a portion of it as long as there was enough land there to allot to everybody. Do I state your position correctly?

Secretary GARFIELD. Yes, sir; that is correct; and I think, now that you have referred to it, that that was the statement made—that certain individuals were getting Indians to choose their allotments over in that area, the Indians not knowing the character of the land and supposing they were getting agricultural land and then finding that they had nothing but timber land, and then the persons who had induced them to make those selections had attempted to purchase it for little or nothing.

Senator OWEN. To take the timber off of it?

Secretary GARFIELD. Yes, sir; that is my impression, that that was a leading fact that made the Secretary act.

Senator BRANDEGEE. I just want to ask this, because I had forgotten at the time that the Senate had passed on yesterday a resolution asking you to state your position with regard to this matter, and I thought perhaps you would rather do it now than have a formal examination upon the matter.

Secretary GARFIELD. Yes; I had not looked this matter up, not knowing that this was what the committee wanted to know about.

Senator DAVIS. Mr. Chairman, it is very near the time when we will have to go up on the floor of the Senate. I will simply ask the Secretary to furnish the committee with the opinion of the Attorney-General on the question of striking these two thousand or eighteen hundred names from the roll, and also that written memorandum as to the testimony of this man whom he has named. Mr. Secretary, you can furnish that, can you?

Secretary GARFIELD. Yes, sir; I can furnish that; but as to the dictated memorandum of my own, regarding Mr. Rosenwinkle's statement, I shall not furnish that, as it is my personal memorandum, dictated at the time, and for the reason stated on which I have declined to furnish that memorandum to-day, as I have likewise declined to state what Mr. Rosenwinkle said to me.

Senator DAVIS. I beg pardon; the notes of the stenographer will show that you told the committee that you could and would furnish that memorandum.

The CHAIRMAN. Oh, no, Senator Davis.

Senator DAVIS. He declined to state who it was.

Senator DIXON. I would like to ask Senator Davis whether he would like to have a purely hearsay matter go into this record, when the Secretary of the Interior has expressly stated that the man has given no foundation for his story; that it was mere rumor, and that he refused to back it up with his own statement.

Senator DAVIS. I understand; but I understood the Secretary to state further that he furnished the names of persons who could give the information, and that he did not in every case look up the parties.

Mr. MCCUMBER. Mr. Chairman, I do not think that we ought to make a public record of an unverified statement which reflects upon the character of men who can not be here to defend themselves.

Senator DIXON. I should object to its going in, certainly.

Senator DAVIS. I have been a prosecuting officer, and I know there are plenty of people who will give information touching matters that can be substantiated by other people that they themselves will not verify.

The CHAIRMAN. Senator Davis, let me suggest that the Secretary has passed upon that matter now. If the committee desires to discuss it before action we ought to do it in private session.

Senator DAVIS. I have no further question to ask. Mr. Secretary, you will furnish the opinion of the Attorney-General?

Secretary GARFIELD. Of course. With all due courtesy to the committee, I think the committee will appreciate, as has been expressed here, that I ought not to repeat in this case, any more than in other cases, the rumors that are stated to me regarding public officials. If I were willing to rehash the stories that are brought to me about many men in public life it would simply mean the giving of the veriest trash and the charging of various things against many individuals.

Senator DAVIS. To be entirely frank with you, and as that is going into the record, the fact that you refused to give it will not prevent my making the statement upon the floor of the Senate.

Secretary GARFIELD. I do not object to that in the slightest. I am simply giving you my reasons for refusing.

Senator DAVIS. I shall go further and state what you told me, as a member of this committee, was in that statement.

Secretary GARFIELD. The Senator is at liberty to state anything he pleases on the floor of the Senate.

(Secretary Garfield was here excused.)

STATEMENT OF WILLIAM R. HARR.

WILLIAM R. HARR, being first duly sworn by the chairman, testified as follows:

Senator DAVIS. Please give your full name.

Mr. HARR. William R. Harr.

Senator DAVIS. What is your present occupation?

Mr. HARR. Special assistant to the Attorney-General.

Senator DAVIS. As assistant to the Attorney-General, did you prepare the opinion in what is known as the Thompson-Goldsby cases, which resulted in the Secretary of the Interior striking the names of some 1,800 or 2,000 Choctaws and Chickasaws from the tribal roll after they had been finally approved by him?

Mr. HARR. As special assistant to the Attorney-General I assisted the Attorney-General in the preparation of the opinion rendered February 19, 1907, in the case of William C. Thompson and others, and not John T. Goldsby, to the Secretary of the Interior.

Senator DAVIS. Under which opinion some 1,800 or 2,000 Choctaws and Chickasaws were stricken from the rolls after the rolls had been completed by the Secretary of the Interior.

Mr. HARR. I understand from careful inquiry upon the subject and my own personal investigation that about four or five hundred persons were stricken from the rolls in consequence of that.

Senator DAVIS. Four or five hundred?

Mr. HARR. Yes, sir.

Senator DAVIS. Choctaws and Chickasaws?

Mr. HARR. Choctaws, Chickasaws, and Creeks.

Senator DAVIS. Do you speak advisedly about that, or do you simply speak from hearsay?

Mr. HARR. I speak from information I have received from persons at the Interior Department as to some of these matters.

Senator DAVIS. You do not pretend that your information as to the number stricken is correct, do you?

Mr. HARR. Only as I have been informed and from the fact——

Senator DAVIS. Very well; we will get that from somebody else. Did you in preparing the opinion of the Attorney-General, or in consulting with him in the preparation of that opinion, advise with and incorporate therein the views of Mansfield, McMurray & Cornish?

Mr. HARR. No, sir.

Senator DAVIS. Did you not advise with Mansfield, McMurray & Cornish as to their views as to the rights of these people before preparing that opinion?

Mr. HARR. Mr. Cornish was at the Department several times and I had some general talks with him on the subject with a view of ascertaining more particularly the law and advising myself in the preparation of the opinion, but not for the purpose of embodying any views of Mr. Cornish.

Senator DAVIS. Mr. Cornish was one of the attorneys whose duty it was to keep people off of the roll, was it not, before the citizenship court of the Territory?

Mr. HARR. I understood that he was anxious to get the people off; yes, sir.

Senator DAVIS. Do you not know that that was what he was employed for?

Mr. HARR. I know the capacity in which he was employed; yes, sir.

Senator DAVIS. Was not that it?

Mr. HARR. He was employed to represent the Choctaw and Chickasaw nations, and to prevent persons from unfairly getting on the roll.

Senator DAVIS. I say, during the preparation of this opinion, or the consultations between yourself and the Attorney-General in preparing it, did you not have frequent conferences with Mr. Cornish with reference to his idea of the law in relation to the rights of these people?

Mr. HARR. I discussed the matter with Mr. Cornish when the matter was in my charge, with a view of informing myself as to what his views were on the subject; yes, sir.

Senator DAVIS. Did you incorporate his views in that opinion?

Mr. HARR. No, sir; I incorporated my own views.

Senator DAVIS. Did you incorporate your own views as coming from Mr. Cornish?

Mr. HARR. No, sir.

Senator DAVIS. Were your views the same as Cornish's views?

Mr. HARR. I could not say as to all matters; it might have been as to some matters.

Senator DAVIS. Did you agree with Cornish in the matter?

Mr. HARR. As to some matters, after full investigation into the matter, I reached the same conclusion and as to others I did not.

Senator DAVIS. Now, in some matters you reached the same conclusion that Cornish reached. How long have you been practicing law, Mr. Harr?

Mr. HARR. Well, I was admitted to the bar in 1896.

Senator DAVIS. Did you ever really practice law?

Mr. HARR. I have practiced to some extent; I have been connected with the practice of law in various capacities ever since I graduated.

Senator DAVIS. From what school did you graduate?

Mr. HARR. The Georgetown Law School.

Senator DAVIS. A little school right close here in the city.

Mr. HARR. Yes, sir.

Senator DAVIS. You graduated from the Georgetown Law School. Did you really ever try a lawsuit in your life?

Mr. HARR. I have assisted in the trial of cases.

Senator DAVIS. I am asking you if you, personally, individually, ever tried a lawsuit in your life before a court.

Mr. HARR. I have; I have assisted, as I say.

Senator DAVIS. Oh, I understand that you have assisted, but did you ever try a case yourself, alone, single-handed, unattended, and unassisted by anybody else?

Mr. HARR. No, sir.

Senator DAVIS. In what capacity have you assisted in the trial of lawsuits?

Mr. HARR. I have, since I have been in the Department——

Senator DAVIS. I am asking you about the trying of suits in court.

Senator DIXON. I insist that the witness ought to be allowed to answer. You are trying evidently to test his legal capacity.

Senator DAVIS. I am trying to find out the capacity of this witness as a lawyer.

Senator BROWN. Does that help the Indians or hurt them?

Senator DAVIS. It will help them a whole lot to find out whether he has the legal ability to strike 2,000 names off the rolls. In what capacity did you ever try a lawsuit in the court?

Mr. HARR. I assisted, as I started to say, some of the Assistant Attorneys-General in the cases that were in the courts.

Senator DAVIS. But to go before a court or a jury—you know what a real lawsuit is?

Mr. HARR. Yes, sir; of course.

Senator DAVIS. You never have figured in that?

Mr. HARR. I never have had. My legal practice has been more confined to the departmental work.

Senator DAVIS. That is what I thought.

Senator BRANDEGEE. Did you cooperate with anybody else in the preparation of this opinion of the Attorney-General's Office, or was it left to you entirely?

Mr. HARR. It was left to me and the Attorney-General. The Attorney-General had a good deal personally to do with the preparation of the opinion.

Senator BRANDEGEE. Who is it signed by?

Mr. HARR. It was signed by the Attorney-General, Mr. Bonaparte.

Mr. BRANDEGEE. Did he approve of it?

Mr. HARR. Yes, sir.

Mr. BRANDEGEE. Did he read it over before he signed it?

Mr. HARR. Yes, sir; he wrote a large portion of it himself. On one proposition he disagreed with me and wrote that himself.

Senator BRANDEGEE. Did you consult with any other lawyers who were interested in the question about which the opinion was written except Mr. Cornish?

Mr. HARR. No, sir; only Cornish.

Senator BRANDEGEE. No lawyer who represented the opposite views?

Mr. HARR. No, sir.

Senator DAVIS. Were you aware of all the facts in connection with this case when you assisted in the preparation of this opinion?

Mr. HARR. I could not say that I was aware of all the facts. I was aware of the circumstances.

Senator DAVIS. To be more specific, did you know that allotment certificates and patents had been issued to these people when you wrote this opinion, or assisted in writing it?

Mr. HARR. No, sir; the——

Senator DAVIS. Just answer the question.

Mr. HARR. I could state very shortly and clearly what those circumstances were.

Senator DAVIS. I would rather that you would answer that question first, and then state anything you wish. Do you know whether or not patents or certificates were issued?

Mr. HARR. No, sir; I did not.

Senator DIXON. Now go ahead with your answer.

Mr. HARR. Well, the conditions or circumstances under which the opinion was rendered were somewhat peculiar. The Secretary of the Interior was directed by the President to send this case to the Attorney-General for his opinion, and the Attorney-General sent the records in the case over to the Department without any statement other than that they were the records in this case.

The CHAIRMAN. Do you not mean that the Department sent them over to your office?

Mr. HARR. I mean that the Secretary of the Interior sent them over to the Department of Justice. The papers simply showed that these cases were pending before the Interior Department, and it did not appear from the records in these cases that the parties were upon the finally approved rolls of the Five Civilized Tribes, nor did it appear that allotment certificates or patents had been issued in any of the particular cases that these cases referred to. The Attorney-General simply passed upon the cases presented and the questions presented by the record as transmitted by the Secretary of the Interior. He did not consider the question as to whether the approval of the Secretary of the Interior was final, because that question was not presented by that record and was something entirely outside of his opinion. As I stated, he simply passed upon the case as presented by the record transmitted to him upon these individual cases, and those

alone, and rendered his opinion thereon and sent it back to the Secretary of the Interior.

Senator DAVIS. Now, as a lawyer, and did you not know at the time that a certificate of allotment or a patent could not be set aside or canceled by the Secretary of the Interior; that it took a judicial determination to do that?

Mr. HARR. Well, I did not know at the time, and I do not know that I know now. The question, as I say, was not before the Attorney-General at the time.

Senator DAVIS. You do not know whether or not the Secretary of the Interior could not cancel a certificate or an allotment?

Mr. HARR. I know that the Secretary of the Interior had no authority under the decisions to set aside a patent after it had been recorded, and in this instance the laws of Congress provide that title should pass upon the recording of the patent in the office of the Commissioner of the Five Civilized Tribes. The question as to whether an allotment certificate could be set aside or not is a much nicer one, and opinions may differ on that.

Senator DAVIS. Are you in charge of any of the suits in mandamus now pending in the district court or the Supreme Court of the United States?

Mr. HARR. I am, with Assistant Attorney-General Sanford.

Senator DAVIS. In those cases that are pending in St. Louis?

Mr. HARR. No, sir; those cases that are here in the District of Columbia.

Senator DAVIS. Have you informed the Attorney-General, the Secretary of the Interior, or any other official or person that it was useless to appeal those suits; that it would be impossible to reverse the judgment of the lower court?

Mr. HARR. I do not know whether I have or not; I do not think I informed the Attorney-General personally, but after the decision of the supreme court of the District of Columbia in what is known as the Goldsby case, the first case, I talked with Mr. Sanford, the Assistant Attorney-General, about the matter, and was disinclined myself personally—after that case had gone to the court of appeals and was decided by the court of appeals adversely to the Government—I was disinclined myself at that time to take any further appeal, as I thought the case was properly decided.

Senator DAVIS. Did you not so advise the Secretary of the Interior?

Mr. HARR. No, sir; the Attorney-General communicated, I think, with the Secretary of the Interior and expressed the view that the cases ought to be appealed.

Senator DAVIS. The Attorney-General expressed the view that the cases ought to be appealed?

Mr. HARR. Yes, sir.

Senator DAVIS. Do you not recall, upon refreshing your memory a little, that the opinion of the Attorney-General to the Secretary of the Interior was just to the contrary; that the cases ought to be dismissed and that they could not be maintained?

Mr. HARR. No, sir; I am very positive that it was not that way.

(Without concluding the examination of the witness, at 12 o'clock m., the committee adjourned until Saturday, May 2, 1908, at 10 o'clock a. m.)

OPENING OF ROLLS.

COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE,
May 2, 1908.

The committee met at 10 o'clock a. m.

Present: Senators Clapp (chairman), Sutherland, Brandegee, Curtis, Brown, Dixon, Stone, Davis, and Paynter.

STATEMENT OF HON. JAMES R. GARFIELD—Resumed.

Senator DAVIS. Mr. Secretary, I just want to ask you a question or two. I asked you on your former examination to give to the committee the letter of Mr. Bonaparte, with the advice from his office relating to the dismissal of these cases which had been stricken from the rolls by Secretary Hitchcock. Will you please file those with the reporter?

Secretary GARFIELD. I have here a copy of the letter of Decembe 12, 1907, from the Attorney-General, Mr. Bonaparte, addressed to the Secretary of the Interior.

Senator DAVIS. You need not read it; you can just file it with the stenographer. Does that letter state to you that it is not necessary to press those appeals?

Secretary GARFIELD. No, sir; it does not.

Senator DAVIS. You stated the other day that you had such a letter.

Secretary GARFIELD. I said I thought there was a difference of opinion between the Departments. I said that I did not know what the contents of the letter from the Attorney-General were.

The correspondence is as follows:

OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., December 12, 1907.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to advise you that, in the appeal taken by you in the John E. Goldsby case from the order of the supreme court of the District of Columbia granting a writ of mandamus compelling you to erase the marks made by your predecessor from the approved rolls of the members of the Choctaw Nation striking petitioner's name therefrom, and to restore his name to the rolls, the court of appeals for the District has affirmed the order in a written opinion, a copy of which I inclose herewith.

In the supreme court of the District Judge Wright's opinion was based entirely on the point of want of notice to Goldsby before his name was stricken from the rolls, while the precise point of the decision in the court of appeals is that your predecessor was not authorized to strike the name from the rolls at the time and in the manner in which he did (that is to say, on the last day on which the time for making up the rolls expired and without notice). The language of the opinion is in many places broader than this, and indicates the view of the court that when any one of the partial rolls had once been approved by the Secretary such action became final, and he had thereafter no authority to strike a name from the approved rolls.

alone, and rendered his opinion thereon and sent it back to the Secretary of the Interior.

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Mr. HARR. Yes, sir.

Senator DAVIS. Do you not recall, upon refreshing your memory a little, that the opinion of the Attorney-General to the Secretary of the Interior was just to the contrary; that the cases ought to be dismissed and that they could not be maintained?

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The language of the opinion of the court of appeals, in many places, goes further than the precise facts in the Goldsby case, and if the broad expressions of opinion which it contains are carried to their logical conclusions, this might result in restoring to the rolls all persons whose names have been at any time stricken therefrom after they had once been approved; although if such persons have been stricken from the rolls after a hearing and before any payments had been made to them or certificates of allotments issued or their enrollment in any way treated as final by the Interior Department, very different questions would arise from those involved in the Goldsby case. You are advised, of course that, by reason of stipulations which have been entered into in the other cases now pending in the supreme court of the District, final judgments will be entered in those cases in accordance with the decision in the Goldsby case, if acquiesced in.

I shall be glad if you will advise me whether it is your wish that, under the circumstances, an appeal should be taken in the Goldsby case. In my opinion, if the said appeal shall be taken, it is, on the whole, probable that the Supreme Court will affirm the judgments of the two lower courts in this particular case; provided the court shall hold that the tribunals in question were authorized to entertain the suit in its present form. There is room, however, for very grave doubts as to their jurisdiction. I think it may be possible that you will consider it of sufficient importance to have the law, both as to the rights of alleged Indians enrolled as citizens of the tribes and as to the power of the courts to control your action with respect to matters of enrollment by mandamus, definitely settled to justify an appeal without regard to the probabilities of success.

Very respectfully, CHARLES J. BONAPARTE,
Attorney-General.

Senator DAVIS. What did he say upon that subject?

Secretary GARFIELD. In this letter he says:

I shall be glad if you will advise me whether under the circumstances an appeal should be taken in the Goldsby case. In my opinion, if the said appeal shall be taken, it is, on the whole, probable that the Supreme Court will affirm the judgment of the two lower courts in this particular case——

Senator DAVIS. That is against the Department?

Secretary GARFIELD. That is against the Department. He says further:

Provided the court shall hold that the tribunals in question were authorized to entertain the suit in its present form; there is room, however, for very grave doubts as to their jurisdiction. I think it may be possible that you will consider it of sufficient importance to have the law, both as to the rights of alleged Indians enrolled as citizens of the tribes and as to the power of the courts to control your action with respect to matters of enrollment by mandamus, definitely settled, to justify an appeal without regard to the probabilities of success.

The CHAIRMAN. The letter will be received in evidence and properly marked.

Secretary GARFIELD. Mr. Chairman, I wish to submit, in connection with the letter from the Attorney-General which has been read, a copy of a letter which the Acting Secretary of the Department of the Interior sent in answer to that letter, dated December 23, 1907.

The letter referred to is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, December 23, 1907.

The ATTORNEY GENERAL.

SIR: I am in receipt of your communication of the 12th instant, inclosing copy of the written opinion rendered by the court of appeals for the District of Columbia in the John E. Goldsby case, and asking to be advised whether it is my wish that, under the circumstances, an appeal should be taken therein.

I think, as suggested by you, that it is highly important the questions involved, both as to the rights of alleged Indians enrolled as citizens of the Five Civilized Tribes and as to the power of the courts to control the action of the Secretary of the Interior in respect of matters of enrollment, shall be definitely settled. I therefore very much desire that an appeal be taken in this case.

Very respectfully, FRANK PIERCE,
Acting Secretary.

Secretary GARFIELD. I also submit a copy of a letter from H. M. Hoyt, Acting Attorney-General, in response to the letter which I have just offered under date of December 27, 1907.

The letter referred to is as follows:

DEPARTMENT OF JUSTICE,
Washington, December 27, 1907.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant in reference to the John E. Goldsby case, and, in accordance with the desire which you express, the case will be taken to the Supreme Court.

Respectfully,

H. M. HOYT, *Acting Attorney-General.*

Senator DAVIS. Does not that letter to you say that it is probable that the Supreme Court will affirm the decisions of the courts?

Secretary GARFIELD. The language of the letter speaks for itself.

Senator DAVIS. Just answer the question. You certainly can answer what the letter says.

Secretary GARFIELD. The letter says:

In my opinion, if the said appeal shall be taken, it is, on the whole, probable that the Supreme Court will affirm the judgments of the two lower courts in this particular case.

Senator DAVIS. And that particular case is a test case, is it?

Secretary GARFIELD. That is one of the classes of cases brought. It is the case of John E. Goldsby.

Senator DAVIS. The Goldsby case is a test case, is it not?

Secretary GARFIELD. There are several of them.

Senator DAVIS. But that is one of them, is it not?

Secretary GARFIELD. It is one of the test cases.

Senator DAVIS. As to whether the Secretary had the right to strike them from the roll.

Secretary GARFIELD. That was the question presented in that case.

Senator DAVIS. So that is one of those cases?

Secretary GARFIELD. Yes, sir; undoubtedly.

Senator DAVIS. And the Department of Justice advised you that it was probable the Supreme Court would sustain the decisions of the two lower courts?

Secretary GARFIELD. In a qualified way. I have read the letter. The letter states what the Department of Justice advised.

Senator DAVIS. You promised at a former hearing to give to the committee, if you could, any specific authority of law that you might have regarding your right to withhold from allotment to the Indians who might ask allotment that forest land, consisting of 1,373,000 acres that were withdrawn by Mr. Hitchcock. Have you that authority?

Secretary GARFIELD. Before going into that I wish to add——

Senator DAVIS. I want that first.

Secretary GARFIELD. Then I will put this in in regular order. I have looked that matter up and found that under the law under which the Secretary was acting in connection with the allotment of these lands, the Secretary is authorized to appraise, allot, and dispose of the surplus land of those various Indian tribes; that in accordance with that law rules and regulations relative to the method of making the allotments and selections had been adopted by the Secretary of the Interior, and, acting under that general law, it has

been held by the Department—that is, by the Secretary, my predecessor as well as by myself—that there being no time fixed when the proposition for allotment or final sale shall be made of the surplus land, that is a question of discretion as to when and how those allotments shall be made, acting under the general law to which I have referred, and the Secretary's discretion as to this particular case is not changed, and therefore, acting in accordance with that law, Secretary Hitchcock did not permit those allotments to be made within the forest area—of 1,476,000 acres, approximately.

Senator DAVIS. Will you please cite me to the statute which says, or intimates even, that the Secretary has the discretion, the unlimited discretion, to withdraw this land from allotment?

Secretary GARFIELD. I have not the number of the statute, but it is the general-allotment statute.

Senator DAVIS. You ought to have it, because I asked you for it.

Secretary GARFIELD. I do not know whether I have it in my pocket or not. It is the general-allotment statute.

Senator DAVIS. That was one of the specific questions that I asked you, was it not?

Secretary GARFIELD. Oh, yes; you asked me a great many questions.

Senator DAVIS. But that was one of them, and you took that down?

Secretary GARFIELD. Yes, sir; I took that down; that is quite right. It is June 28, 1898, 30 Stats., 495; also July 1, 1902, 32 Stats., 641, and April 26, 1906, 34 Stats., 137. They were the three statutes under which the Secretary of the Interior is given the authority to appraise, allot, and thereafter sell the residue of the lands undisposed of and unallotted.

Senator DAVIS. And thereafter to appraise and sell the unallotted lands?

Secretary GARFIELD. The direction is given to appraise, allot, and thereafter sell the residue of land undisposed of and unallotted.

Senator DAVIS. That is true; but can you show me any authority of law by which the Secretary of the Interior is given any discretion to withdraw this 1,373,000 acres of land from allotment?

Secretary GARFIELD. The Secretary has not withdrawn from allotment in the sense in which you use the word. The Secretary has declined to complete the applications for allotment within that area.

Senator DAVIS. Now, Mr. Secretary, do you not know, as a matter of fact, that many Indians of the Choctaw and Chickasaw tribes have asked for allotment in this particular area?

Secretary GARFIELD. No, I do not; I am advised by the Indian Office that very few have asked for allotment within that area.

Senator DAVIS. Then "very few" means some?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. Some, then, have asked for allotment?

Secretary GARFIELD. Without doubt.

Senator DAVIS. And you have denied them?

Secretary GARFIELD. I have refused to complete their selections of allotment at that time, as asked for, and have not as yet completed them.

The CHAIRMAN. May I ask a question for general information? Where does that leave those Indians whose applications are pending

for allotment within this area, with reference to the statutes requiring the definite closing of the allotting? I ask that for information.

Secretary GARFIELD. That would leave them in this condition: They have made application for allotment in a specific place. The Secretary had declined to consider and finally act upon those applications. They therefore can either hold those tentative allotments until the Secretary finally determines what action will be taken or they may withdraw their application and ask for allotment elsewhere, as has been done, I am informed, in other cases. So they are simply pending there now—applications which have not been acted upon by the Department.

The CHAIRMAN. Your idea would be, then, that none of the statutes fixing the time within which these matters must be closed up would interfere with the rights of these Indians who had sought allotments themselves within the area and that the Department had refused to allot because the selection was within the area?

Secretary GARFIELD. Exactly; they may still complete that, and if ultimately nothing further be done on this area their allotments, of course, would be completed and finally approved.

Senator DAVIS. Now, Mr. Secretary, what is the tenure or the title of the Choctaws and Chickasaws to their land?

Secretary GARFIELD. My understanding is that it is a title in fee; that the Government acts as trustee for them in the final disposition of that property.

Senator DAVIS. In whom does the legal title rest in regard to the other Indians of the Five Civilized Tribes?

Secretary GARFIELD. All of the Five Civilized Tribes are the same, I think, in that regard.

Senator DAVIS. They are all in fee?

Secretary GARFIELD. They are all in fee, as I understand it. The lands were granted originally to those tribes.

Senator DAVIS. The other Indians?

Secretary GARFIELD. Outside of the Five Civilized Tribes?

Senator DAVIS. Yes.

Secretary GARFIELD. The lands of the Indians outside of the Five Civilized Tribes are held by the United States Government, the fee being in the Government, and the Indians being given such title either by occupancy or for use, as either in the act creating the reservation or the proclamation creating the reservation may be indicated.

The CHAIRMAN. Are you speaking now of Indians in the Indian Territory other than the Indians of the Five Civilized Tribes, or Indians generally?

Secretary GARFIELD. Indians generally, as I understood the question.

The CHAIRMAN. There are some exceptions?

Secretary GARFIELD. Without doubt there are some exceptions, but I am speaking as a general rule the title is as I have indicated.

Senator DAVIS. Now, the lands of the Choctaws and Chickasaws are held by those tribes in fee?

Secretary GARFIELD. Subject to the exercise of a certain trust which Congress created at the time the grant was made, and at subsequent times by acts of Congress.

Senator DAVIS. Is there any restriction of the Chickasaws and Choctaws of their land; is it not in fee?

Secretary GARFIELD. There are a number of restrictions.

Senator DAVIS. Affecting the title?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. In what way?

Secretary GARFIELD. That the title can not be transferred by those Indians except under definite arrangement.

Senator DAVIS. That is in the matter of guardianship?

Secretary GARFIELD. Yes, sir; being held in trust.

Senator DAVIS. But the title is in the Choctaws and Chickasaws in fee?

Secretary GARFIELD. Yes; as I understand it, under the original agreement with those various Indians.

Senator DAVIS. Do you know a man by the name of Cecil Lyons, of Texas?

Secretary GARFIELD. I do.

Senator DAVIS. He is the chairman of the Republican State central committee in Texas, is he not?

Secretary GARFIELD. I do not know whether he is now; he was at one time.

Senator DAVIS. He is a very wealthy man, is he not?

Secretary GARFIELD. I do not know anything of his personal affairs.

Senator DAVIS. Do you know him personally?

Secretary GARFIELD. I do.

Senator DAVIS. Has he ever been to see you about this matter of the retention of these various lands—this 1,373,000 acres?

Secretary GARFIELD. He has—no, I beg your pardon, not with regard to this; he has been to see me in regard to the segregated coal and asphalt land.

Senator DAVIS. He has been to see you with regard to the segregated coal and asphalt lands?

Secretary GARFIELD. Yes, sir.

Senator DAVIS. Is it not a fact that this forest land—this 1,373,000 acres—is being denuded of its timber by the sawmills of that country?

Secretary GARFIELD. Not so far as I am able to prevent it.

Senator DAVIS. It is not a question as to whether you can prevent it, but is it being done?

Secretary GARFIELD. I understand not. There have been cases where that has been done and I have stopped it whenever it has been brought to my attention.

Senator DAVIS. But it has been done, though?

Secretary GARFIELD. Yes, sir; I am so advised.

Senator DAVIS. To how great an extent?

Secretary GARFIELD. I do not know. I have had no complaint in regard to that matter during the past few years.

Senator DAVIS. Do you not know that this man, Cecil Lyon, is having that land denuded of its timber?

Secretary GARFIELD. This is the first intimation I have had of it. I have never heard that intimation made before.

Senator DAVIS. Probably I ought not to put it that strong, but he is friendly to the fellows who denude it.

Secretary GARFIELD. I have never even heard it. I did not know that he had any interest, either directly or indirectly, with the timber interests in that section.

Senator DAVIS. What interests has he with reference to the segregated coal and asphalt lands?

Secretary GARFIELD. He has made application to the representatives of the two tribes to enter into a contract for the disposition of that segregated coal-land area to the State of Oklahoma, as I understand it, and had entered into negotiations with the representatives of the Indians, to the end that he might act as their agent in effecting a sale of the coal lands.

Senator DAVIS. Now, you declined on your former examination before the committee to give the committee your written memorandum which you had made with regard to the statement of Mr. Rosenwinkle. Do you decline to do that now?

Secretary GARFIELD. I do.

Senator DAVIS. You stated on your former examination before this committee that Mr. Rosenwinkle had furnished you with the names of certain parties who he said would substantiate his statements and make good in that behalf. You answered this question partially before, but I want to get it specifically. Have you followed up that inquiry and have you seen or tried to see or endeavored to get from those parties the information which Mr. Rosenwinkle communicated to you?

Secretary GARFIELD. In the first place you put in the word "would" instead of "might." Mr. Rosenwinkle said those persons "might" give the information.

Senator DAVIS. Have you followed up that inquiry? Put it in any way you desire.

Secretary GARFIELD. I did, as far as I was able.

Senator DAVIS. How far were you able?

Secretary GARFIELD. I found there was nothing in the statements he made. Some of the people were away——

Senator DAVIS. Just tell us how you did it?

Secretary GARFIELD. I found that the rumors were that these people might give information about that matter that had been current for the last two years, I think.

Senator DAVIS. Did you have either of those parties before you?

Secretary GARFIELD. I did not.

Senator DAVIS. Did you try to get them?

Secretary GARFIELD. I did not.

Senator DAVIS. Did you make any effort to get them?

Secretary GARFIELD. I did not.

Senator DAVIS. So you did not make any effort to follow up the inquiry at all?

Secretary GARFIELD. I did.

Senator DAVIS. In what way?

Secretary GARFIELD. To the extent I have stated.

Senator DAVIS. You simply inquired at the Department and found that those rumors had been current for some time?

Secretary GARFIELD. I found that that statement had been made there before.

Senator DAVIS. But you attached no importance to the statement of Rosenwinkle, and therefore you made no inquiry as to the other parties?

Secretary GARFIELD. I did not make any inquiry as to the other parties. He did not know where some of them were, and I had no means of finding them.

Senator DAVIS. Will you give to the committee the names of those parties which Mr. Rosenwinkle suggested?

Secretary GARFIELD. No, sir; I think you ought to get that from Mr. Rosenwinkle himself.

Senator DAVIS. Why will you not give it to the committee?

Secretary GARFIELD. For the same reason that I gave when I was here before, that Mr. Rosenwinkle's statements were of such a character that I did not consider them worthy of credence.

Senator DAVIS. Now, you can not possibly object, Mr. Secretary, upon the ground that the giving of those names would spread an unfair imputation against the officers of the citizenship court; the giving of the names would not do that.

Secretary GARFIELD. I put it on the ground, Senator, that Mr. Rosenwinkle, if the committee desire it, could make the same statements that he made to me, if he desired to make them.

Senator DAVIS. It is not a question of what Mr. Rosenwinkle can do. It is a question of whether or not you will furnish to this committee the information that Mr. Rosenwinkle furnished to you.

Secretary GARFIELD. No, I will not.

Senator DAVIS. You decline to do that?

Secretary GARFIELD. I decline to do that.

Senator DAVIS. That is all.

The CHAIRMAN. Is there any further statement that you care to make, Mr. Secretary?

Secretary GARFIELD. Senator Davis asked me regarding the number of persons still unallotted and the number of acres still unallotted in the Choctaw and Chickasaw nations. I desire to say that that is being compiled in the Indian Office and as soon as the figures are obtained they will be sent to the committee.

Senator DAVIS. We are going to close this investigation very shortly. Will you furnish them to me?

Secretary GARFIELD. I have directed Mr. Ward to have them sent up to the committee. I think they are here now. The memorandum is as follows:

The total area of the Choctaw Nation is 6,950,043.66 acres. There have been allotted 4,226,217.17 acres; reserved in the coal segregation for town sites, cemeteries, small timber reserve authorized by Congress, etc., 507,607.95 acres; special timber reserve, 1,386,720 acres; still subject to allotment, 829,498.54 acres.

The area of the Chickasaw Nation is 4,707,904.28 acres. There have been reserved from allotment for asphalt segregation, town sites, cemeteries, etc., 45,074.89 acres; allotted, 3,779,106.94 acres; still subject to allotment, 883,722.45 acres.

No citizens or freedmen have been prevented from securing allotments by reason of the temporary withdrawal of the timbered land.

After all deductions have been made, including what is known as the timber reserve, there remained on July 1, 1907, 829,498.54 acres in the Choctaw Nation, 883,722.45 acres in the Chickasaw Nation, leaving a total of 1,713,220.99 acres still susceptible to allotment.

MAY 2, 1908.

Senator DAVIS. That statement says:

No citizens or freedmen have been prevented from securing allotments by reason of the temporary withdrawal of the timbered land.

That is in conflict with your statement here, is it not?

Secretary GARFIELD. Oh, no.

Senator DAVIS. But you have declined to allot them on that area?

Secretary GARFIELD. This memorandum says:

Have been prevented from securing allotments.

I stated that I have not approved the requests for the selections of the allotments, and if they saw fit to make allotments elsewhere they could, but those are still pending and will only be acted upon when the Department—whenever we shall determine upon finally what shall be done with that forest area.

Secretary Garfield was thereupon excused.

STATEMENT OF EDGAR B. HENDERSON.

EDGAR B. HENDERSON, having been first duly sworn by the chairman, testified as follows:

The CHAIRMAN. Please state your name, age, residence, and occupation.

Mr. HENDERSON. My name is Edgar B. Henderson; I am 44 years of age; I am a clerk in the Indian Office; residence, Washington, D. C.

Senator DAVIS. What have been your official duties during the last five years?

Mr. HENDERSON. Conducting correspondence connected with the Indian Territory matters.

Senator DAVIS. Have you written opinions in any Choctaw or Chickasaw cases?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. How many, do you think?

Mr. HENDERSON. A very large number; I could not say.

Senator DAVIS. Are you a lawyer?

Mr. HENDERSON. I am not a member of the bar.

Senator DAVIS. Have you ever been licensed to practice law?

Mr. HENDERSON. No, sir.

Senator DAVIS. Did your office have before it when decisions were rendered in the Choctaw and Chickasaw cases, the official rolls, prepared by Government officials and agents, between 1830 and 1860, a part of which were in the custody and possession of the Secretary of the Treasury and the remainder in the possession of the Secretary of the Interior?

Mr. HENDERSON. We had before us such rolls as were in the possession of the Secretary of the Interior, or the Interior Department.

Senator DAVIS. Did you have the rolls prepared by the Government between 1830 and 1860? Just answer yes or no.

Mr. HENDERSON. No, sir; not all.

Senator DAVIS. Did you have any of them?

Mr. HENDERSON. Prepared by the Government; yes, sir.

Senator DAVIS. Between 1830 and 1860 ?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Do you not know, as a matter of fact, that those rolls are locked up now in the Treasury Department and in the Secretary of the Interior's Department and that you have never had any of them?

Mr. HENDERSON. No, sir; I do not know that.

Senator DAVIS. How many of them did you have?

Mr. HENDERSON. We had in our office, and have had all the time, the roll of those Choctaws.

Senator DAVIS. I am speaking of Choctaws and Chickasaws.

Mr. HENDERSON. I was going to specify in particular those who mustered for immigration purposes in 1831, the roll prepared of those Choctaws who claimed land under all of the provisions of the Choctaw treaty of 1830 and the supplement. We have had all the muster rolls of the Choctaws as they were moved westward, and as to the Chickasaws, we had the immigration rolls and the rolls of all those——

Senator DAVIS. Now, just to refresh your memory, I will ask if there are not some 80 or 90 of those official rolls in the Interior Department or the Treasury Department?

Mr. HENDERSON. Not that I know of.

Senator DAVIS. You do not know anything about it, then; you have not seen them, have you?

Mr. HENDERSON. I have seen all that have been in the Indian Office.

Senator DAVIS. That, of course, is evident; but if there are 80 or 90 official rolls prepared by the Government between 1830 and 1860 in the Secretary of the Interior's office and the Treasury Department, you have not seen them, have you?

Mr. HENDERSON. Not all of them; no, sir.

Senator DAVIS. Then you did not have them before you when the decisions were rendered in the Choctaw and Chickasaw cases, did you?

Mr. HENDERSON. Only such as we had in our office.

Senator DAVIS. You know what I am talking about; you did not have those rolls, did you?

Mr. HENDERSON. I wanted to specify. Of course we did not have anything but what was in the Indian Office. What may have been in the Secretary's office or in the Treasury Department we did not have.

Senator DAVIS. Of course, what you had you had, but you did not have any of those 80 or 90 rolls that were locked up in the Treasury Department or in the Secretary's office when you prepared the opinions in these cases?

Mr. HENDERSON. No, sir.

Senator DAVIS. Now, with the exception of the Mississippi Choctaw cases, the only rolls you had before you were six rolls and parts of rolls made up by the tribal officials, were they not?

Mr. HENDERSON. I have learned so from correspondence.

Senator DAVIS. You know that to be true, do you not?

Mr. HENDERSON. Yes, sir; from correspondence.

Senator DAVIS. You only had six rolls made up by tribal officials—rolls and parts of rolls—when you decided this case?

Mr. HENDERSON. Yes, sir. I will specify, in explanation of that, that we have in our office two rolls of claims filed by the tribal authorities for self-immigration, which are rolls——

Senator DAVIS. I am not talking about rolls for claimants, or anything of that kind. The fact is you only had six rolls and parts of rolls prepared by tribal officials when you decided this case, did you not?

Mr. HENDERSON. I expect that is true.

Senator DAVIS. You say you expect. Do you not know that it is true? We do not want to have any expecting about it.

Mr. HENDERSON. You are asking me about rolls that were in the hands of the Commission to the Five Civilized Tribes, and I only know that through correspondence.

Senator DAVIS. Does not your correspondence show it?

Mr. HENDERSON. Yes, sir; it does.

Senator DAVIS. Then just say so. There were only six or seven complete or partial rolls made by the tribes, which were used by the Commission and the Department in making the final rolls, except the Mississippi Choctaws, were there not?

Mr. HENDERSON. I think that is true.

Senator DAVIS. Did not Assistant Attorney-General Van Devanter, in an opinion rendered March 17, 1899, in which he construed and defined the act of June 28, 1898, direct the departmental officials to enroll any person whose name rightfully appeared on any tribal roll and his or her descendants?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Now, the fact that the Department and the Commission did not have all the official rolls precluded the Department from making a correct roll of all persons whose names appeared on any tribal roll, did it not?

Mr. HENDERSON. That would follow necessarily.

Senator DAVIS. In your opinion, how many persons who were of Choctaw or Chickasaw Indian blood have been denied enrollment by the Commission and the Department?

Mr. HENDERSON. I could not even venture an opinion on that, Senator.

Senator DAVIS. Can you not give a guess, from your general knowledge of affairs in the office?

Mr. HENDERSON. No, sir.

Senator DAVIS. Well, were not 2,023 cases stricken off of the rolls after the rolls had been passed on by the Secretary of the Interior?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. The rights of how many persons were affected by that decision, in your judgment?

Mr. HENDERSON. Considerably more than the number that were stricken off.

Senator DAVIS. Do you not think as many as 10,000 people were embraced in those 2,023 cases?

Mr. HENDERSON. They were not cases; they were individuals.

Senator DAVIS. No; I beg your pardon. Were there not 2,023 cases stricken off?

Mr. HENDERSON. No, sir; names.

Senator DAVIS. Not cases?

Mr. HENDERSON. I will correct your figures on the number of names. It is 2,284 names.

Senator DAVIS. Then they were not cases?

Mr. HENDERSON. No, sir.

Senator DAVIS. Well, were not 2,023 cases determined during the week ending March 4, 1907?

Mr. HENDERSON. I do not think so.

Senator DAVIS. How many cases were determined? I find that you are right; it was names and not cases that were stricken off.

Now, were there not 2,023 cases determined by the Secretary of the Interior during the week preceding March 4, 1907?

Mr. HENDERSON. I have never made a count of them, but I do not think so.

Senator DAVIS. If Mr. Ward says there were, it is true, is it not?

Mr. HENDERSON. Yes, sir, if he said so; he evidently knows.

Senator DAVIS. Now, in those 2,023 cases—if there were that many determined in the week preceding March 4, 1907—how many people would be affected by that determination, in your judgment?

Mr. HENDERSON. Well, on the basis of an ordinary estimate, you would say five times as many people as there were cases.

Senator DAVIS. That would be 10,000 people, then?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. That is what I was after a while ago. I did not quite understand my own case. Was there an order issued by the Secretary, or the Commissioner, or any understanding, that in these cases the findings of the Commission should be pro forma affirmed by the Department?

Mr. HENDERSON. I never saw such an order.

Senator DAVIS. You do not know anything about it?

Mr. HENDERSON. Only by hearsay.

Senator DAVIS. What is your information by hearsay?

Mr. HENDERSON. I heard from a gentleman in the Interior Department that the Secretary of the Interior did issue such an order by formal order.

Senator DAVIS. That was the order?

Mr. HENDERSON. I heard that it was; I never saw it.

Senator DAVIS. Who was the gentleman from whom you heard this?

Mr. HENDERSON. General Webster.

Senator DAVIS. General Webster told you that such an order as that had been issued?

Mr. HENDERSON, Yes, sir.

Senator DAVIS. It would be pro forma order affirmed by the Department?

Mr. HENDERSON. No, sir; to rely on his statement of facts, but our own interpretation of the law.

Senator DAVIS. Let me ask you the question again: You say that you do not know of it of your own knowledge, but General Webster told you of it?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Did not General Webster tell you that there was an order issued by the Secretary or the Commissioner—either of them—or that there was an understanding that in these 2,023 cases the findings of the Commission should be pro forma affirmed by the Department without any investigation?

Mr. HENDERSON. That is not my understanding of what he said.

Senator DAVIS. That was not your understanding?

Mr. HENDERSON. That was not my understanding.

Senator DAVIS. What was your understanding?

Mr. HENDERSON. That the statement of the Commission as to the facts in the case should be accepted.

Senator DAVIS. Without any inquiry?

Mr. HENDERSON. Without inquiry.

Senator DAVIS. Does not that amount to an affirmance pro forma?

Mr. HENDERSON. No, sir.

Senator DAVIS. In what respect does it differ?

Mr. HENDERSON. We might apply the rules of law and the decisions of the Department differently from what you did.

Senator DAVIS. Let me understand this matter. If I understand you, the case was made before the Commission?

Mr. HENDERSON. Yes, sir.

Senator SUTHERLAND. And in the report of the Commission the Commission summarized the facts?

Mr. HENDERSON. That is it.

Senator SUTHERLAND. And you were directed as you understood——

Mr. HENDERSON. We were not in the Indian Office, but my information is that that order was issued in the Secretary's office for the guidance of the people in the Secretary's office.

Senator SUTHERLAND. But the order or direction, as you understood, was that you were to accept the finding of facts as made by the Commission?

Mr. HENDERSON. Yes, sir.

Senator SUTHERLAND. Without going over the evidence to verify the ultimate facts found by the Commission?

Mr. HENDERSON. That is right; yes, sir.

Senator SUTHERLAND. Why was that done; because of lack of time?

Mr. HENDERSON. It was because of the hurry and the lack of time.

Senator SUTHERLAND. The law had fixed a certain time within which all of these cases must be decided?

Mr. HENDERSON. Yes, sir.

Senator SUTHERLAND. And only a week of that time then remained?

Mr. HENDERSON. I do not think that order was issued a week ahead; I think it was issued, if issued at all, two weeks or possibly more ahead because of the rushed condition for three weeks at least or possibly four.

Senator SUTHERLAND. Would it have been possible to have gone over all of the facts in those various cases to verify the findings of facts of the Commission?

Mr. HENDERSON. No, sir.

Senator SUTHERLAND. It would not have been possible owing to the limited time remaining?

Mr. HENDERSON. No, sir; it would not have been possible.

Senator DAVIS. Now, Mr. Henderson, is it not a fact that these 2,023 were practically summarily dismissed by the Secretary of the Interior without any consideration at all?

Mr. HENDERSON. No, sir.

Senator DAVIS. What consideration did he give them, or your Department, or any other Department?

Mr. HENDERSON. I read every case that I decided or handled; some of the other people read all the cases that they handled, including the facts.

Senator DAVIS. You say you read the record that you had?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. And you know of other persons who read the records that they had?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Do you not know that it would have been impossible for the Secretary or his office force to have examined the record of 2,023 cases within a week?

Mr. HENDERSON. I do not think that they did it; I do not think that that many cases were determined at that time.

Senator DAVIS. Well, you do not know anything about that. You stated a moment ago that if the testimony of Mr. Ward showed that 2,023 cases were determined that that was true?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Now, if 2,023 cases were determined in a week do you not know that it would be impossible for the office force there to examine the record so as to pass upon them with any degree of deliberation?

Mr. HENDERSON. Yes, sir; it would be impossible.

Senator DAVIS. Now, in the cases that you have passed upon, approximately, what percentage of the decisions of the Commission to the Five Civilized Tribes did you affirm?

Mr. HENDERSON. Nine out of ten.

Senator DAVIS. Nine out of ten. Why? Because of this order?

Mr. HENDERSON. Because I believed it was a proper thing to do.

Senator DAVIS. Did you not affirm them because of the order issued by the Secretary of the Interior that the findings of fact should be passed upon affirmatively pro forma?

Mr. HENDERSON. No, sir.

Senator SUTHERLAND. I did not understand Mr. Henderson to say that any direction was given that they should pass upon them pro forma without giving any consideration; I understood him to say——

Senator DAVIS. He did say so.

Senator SUTHERLAND. You may be right, and I may be wrong, but I want to straighten it out. I understood him to say that the direction was that they were to consider the findings of fact as made by the Commission.

Senator DAVIS. That is the question I asked him.

Senator SUTHERLAND. No; you asked him whether or not they did not pass on them pro forma without giving them any consideration.

Senator DAVIS. I will ask the question again. You say that it would be impossible to consider 2,023 cases with any degree of deliberation within a week, such as were before the Secretary of the Interior?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Now, you say that nine out of ten of those cases submitted to you individually were affirmed by you, that is, the finding of the Commission to the Five Civilized Tribes?

Mr. HENDERSON. No——

Senator DAVIS. I asked you if that affirmance and your expeditious action in those cases was not influenced by the order of the Secretary of the Interior, as you understood it from General Webster, that the findings of fact reported by the Commission, and the authorities who had that matter in charge, should be accepted pro forma by you?

Mr. HENDERSON. No, sir; I had not learned it at that time. General Webster told me that day before yesterday.

Senator DAVIS. You did not know anything about this order of the Secretary of the Interior, if such order was made, while you were investigating these cases?

Mr. HENDERSON. No, sir.

Senator DAVIS. It is a matter of no consequence. That is all I care to ask.

The CHAIRMAN. Is there any further statement that you care to make before leaving the committee room, Mr. Henderson?

Mr. HENDERSON. I do not know of anything that I could say in amplification of what I have already said, except that we have learned lately that there was some rolls in the hands of the Secretary of the Treasury that we had never heard of before.

Senator DAVIS. How many?

Mr. HENDERSON. I do not know. In answering a question concerning those eighty or ninety rolls, I do not know anything about the existence of any such number at all, but I have learned informally recently that there was some rolls there.

Senator CURTIS. Did you find the date of those rolls; was you told the date of them?

Mr. HENDERSON. I was told that there was a rather extensive roll.

Senator DAVIS. They were tribal rolls; were they not?

Mr. HENDERSON. I do not know the nature of them, Senator, but I was told recently that there is a roll in the Treasury that was compiled for the purpose of handling the distribution of the $150,000 under the treaty of 1855. I have never seen it and just merely know of it by being informed of it informally.

Senator CURTIS. Was that of all the Five Tribes?

Mr. HENDERSON. The Choctaws.

Senator CURTIS. The Choctaws only?

Mr. HENDERSON. I think of Choctaws only.

Senator CURTIS. In passing upon these cases, did you give them the same consideration that you would other cases ordinarily?

Mr. HENDERSON. Yes, sir; with certain limitations.

Senator CURTIS. What were those limitations? You say that you took the finding of fact of the Commission as conclusive on those questions of fact?

Mr. HENDERSON. No, sir; it was this class of cases—very frequently an idea would occur to me that I would like to have a fuller explanation in a particular case, and if there had been time possible in two or three cases—I do not remember that there was—but if there had been time, I would have recommended that the case be reported for further hearing upon that particular subject.

Senator CURTIS. Upon the one question?

Mr. HENDERSON. Yes, sir; but of course, at that time that would have been idle, and if there were such instances of that kind necessarily the cases would have gone upon the record.

Senator CURTIS. And the cause of this haste, or rather because of your not calling for this additional information, was because the date had been fixed for the closing of the rolls?

Mr. HENDERSON. Yes, sir; but in one case that I handled on Sunday, March 3, I recommended that it be reversed, and it was reversed by the Department, resulting in the enrollment of 92 people.

Senator CURTIS. That is all I care to ask.

Senator BRANDEGEE. Was this person who informed you of the existence of the roll in the Treasury Department, that you had not previously known of, in a position to know of the existence of the roll?

Mr. HENDERSON. I think he was.

Senator BRANDEGEE. Was he an employee of the Department or connected with it?

Mr. HENDERSON. No, sir; it was Mr. Ballenger, who called me up over the telephone and asked me for some information about something, and told me incidentally he had just discovered the existence of this roll in the Treasury Department.

Senator BRANDEGEE. Did he state what facts he had of this discovery, or how he discovered it?

Mr. HENDERSON. No, sir; he just said he had discovered it, or seen it there.

Senator BRANDEGEE. He had seen it there?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. I want to ask you if you know anything of this letter, which I will read:

WASHINGTON, D. C., *April, 1908.*

Hon. JEFF DAVIS,
U. S. Senate, Washington, D. C.

DEAR SIR: I am inclosing you a list of questions which, if you ask Mr. Ward, will develop some interesting facts, I believe, regarding the rolls in the Five Civilized Tribes.

Very truly,

(Signed) ONE WHO KNOWS.

Mr. HENDERSON. No, sir; I do not need to look at it; I never heard of such a thing.

Senator DAVIS. Did you not write that letter?

Mr. HENDERSON. No, sir.

Senator DIXON. Is this the original?

Senator DAVIS. Yes; it incloses a list of questions.

Senator BRANDEGEE. Is that a typewritten document?

Mr. HENDERSON. Yes, sir.

Senator DAVIS. Did not some one in your office write that letter to your knowledge?

Mr. HENDERSON. I have no knowledge of it whatever.

Senator DAVIS. Please examine these questions, Mr. Henderson, and see whether or not they could have been written by anybody who was not in possession of the inside facts with regard to the workings of this Department.

(The witness here examined the paper referred to by Senator Davis.)

Senator DAVIS. You have examined enough of it to know. Could those questions have been submitted to me by anyone except some official of your Department who knew the inside facts of this matter?

Mr. HENDERSON. I think they could.

Senator DAVIS. Do you think that I could have written out such questions as these?

Mr. HENDERSON. I do not think so.

Senator DAVIS. Then who could, outside of some employee of your Department?

Mr. HENDERSON. Oh, there are attorneys outside who are interested in these matters who could have very easily formulated those questions.

Senator DAVIS. You think they could have formulated those questions?

Mr. HENDERSON. Yes, sir.

The CHAIRMAN. Do you want these questions in the record?

Senator DAVIS. Yes, sir.

The CHAIRMAN. Very well; they may be marked and received in evidence.

The questions referred to are as follows:

1. Is it not true that a number of persons found by the Dawes Commission to be entitled to enrollment never had their cases passed on by the Secretary of the Interior because of the rush of work of finally closing the rolls or for other reason?

2. Is it not true that the Dawes Commission overlooked or failed to consider the cases of a number of applicants for citizenship?

3. Is it not true that a number of persons whose enrollment was acted on favorably by the Secretary of the Interior were not placed on the final approved rolls owing to oversight after being ordered placed thereon?

4. Is it not true that a number of persons found to be entitled to enrollment by the Dawes Commission and believed by you to be so entitled did not have their cases passed on at all by the Secretary owing to oversight or rush of the final hours?

5. How many cases of applicants for enrollment were passed on by the Commissioner of Indian Affairs in the last six weeks before March 4, 1907?

6. How many in the last month?

7. How many in the last week?

8. How many in the last two days?

9. How many cases of applicants for enrollment were passed on by the Secretary of the Interior in the last six weeks?

10. How many in the last month?

11. How many in the last week?

12. How many in the last two days?

13. Prior to the last month what was the least number of cases passed on in any one month?

14. Is it not a fact that in the last month there were exceedingly few reversals of the recommendations of the Dawes Commission, while there were quite a number earlier when there was more time?

15. Is it a fact that in the Secretary's Office many cases in the last month were affirmed without even reading the record?

16. Is it not a fact that your office urgently requested and desired an extension of time for closing the rolls because of recognition of the fact that fair and adequate consideration could not be given in the short time remaining to the many cases still unacted on?

17. Would you be willing to have important property rights of your own, involving perhaps your title to a home in which you had lived for years passed on in the manner in which necessarily owing to the limited time the rights were passed on in the last few weeks of applicants for citizenship?

18. Do you believe it would be fair and inequitable to provide an opportunity for redetermination of those cases passed on in the last thirty days before March 30, 1907, and of those cases in which test cases showed that previously persons had been unjustly barred from their rights on some technicality that did not go to the merits?

19. Is it not a fact that full bloods and their children were barred under the opinion of the Attorney-General of February 19, 1907, on the ground that they had not applied to the Dawes Commission for enrollment, or applying, had been refused on some technicality?

20. Is it not a fact that persons were barred from their consideration of their cases on the merits because the Dawes Commission reported there was a judgment of Judge Springer's court adverse to them and that later in other cases, the existence of any such judgment records that later persons were enrolled while several hundred others did not have their cases considered in their merits?

21. Is it not a fact that a number of persons were ordered enrolled on their merits and then were not enrolled because of an opinion of the Attorney-General that failure to remove their cases to the Choctaw-Chickasaw citizenship courts had technically barred consideration of their cases on their merits?

22. Is it not a fact that a number of persons were stricken from the rolls because of the opinion of the Attorney-General and that when they went to court, they were ordered restored to the rolls?

23. Has the Attorney-General's Office claimed the Secretary misconstrued and misapplied his opinion?

24. Is it not a fact that the Choctaw and Chickasaw freedmen were given only nine days within which to apply for enrollment of their unborn children.

25. Is it not a fact that the Dawes Commission was hostile to the enrollment of the newborn freedmen and could have given more time?

26. Did not the opinion of the Attorney-General operate to bar of consideration on their merits a number of the more ignorant Indians who knew nothing of the forms of procedure.

The witness was thereupon excused.

Secretary GARFIELD. Mr. Chairman, I do not know whether the opinion of the Attorney-General, which was written February 19, 1907, has been presented to the committee.

The CHAIRMAN. The only information that has been presented was this letter this morning.

Secretary GARFIELD. I should like, then, to present the opinion rendered by Attorney-General Bonaparte upon which the action is based. This, Mr. Chairman, is the opinion rendered by Mr. Bonaparte, dated February 19, 1907, upon which opinion the Secretary of the Interior took the action that he did in striking the names from the roll before the 4th of March, and I simply call attention to one statement in the opinion, which appears on page 161 of this print. After considering the various classes of cases presented, he says:

In my opinion, these parties should be stricken from the rolls.

Senator DAVIS. Please submit the whole opinion without comment.

Secretary GARFIELD. Very well. I am advised that it was acting on that opinion that Secretary Hitchcock caused the names to be stricken from the roll.

(The opinion appears in the appendix.)

GEORGE A. WARD—Recalled.

Senator DAVIS. Mr. Ward, the other day, in examining you before this committee I think I made a mistake. I asked you if there were not the applications of 2,023 persons decided by the Secretary of the Interior in a week prior to March 4, 1907. I should have asked you whether there were not 2,023 cases passed upon in the Department in a week prior to March 4, 1907.

Mr. WARD. I can not say as to that, but I do not think that there were that many cases.

Senator DAVIS. How many do you think were passed upon?

Mr. WARD. In say, ten days, about 1,800—say ten days prior to March 4, 1,800 cases.

Senator DAVIS. Do you not know that the record shows that there were exactly 2,023 cases?

Mr. WARD. I do not.

Senator DAVIS. You think there were about 1,800, as you say?

Mr. WARD. That is simply an estimate.

Senator DAVIS. I understand. If there were 1,800 cases passed upon by the Secretary of the Interior—in what length of time did you say?

Mr. WARD. Within ten days.

Senator DAVIS. Within ten days prior to the 4th of March the rights of how many people would that involve?

Mr. WARD. I have no idea.

Senator DAVIS. Well, give us an estimate?

Mr. WARD. I can not estimate it.

Senator DAVIS. Would it be five to a case on an average?

Mr. WARD. No, I think not, not in the closing days.

Senator DAVIS. How many would there be to a case?

Mr. WARD. They would possibly average, I believe, three; that would be a fair average.

Senator DAVIS. Three to a case?

Mr. WARD. Yes, sir; three to the case. Now, leaving out one or two big cases like the Reilly case and the Miller case—and there was some other big case, I have forgotten the title—as I recollect it, there were only three big cases in the closing days.

Senator BRANDEGEE. What was it that you were going to say when you were interrupted? You said, "and of that there were 1,800?"

Mr. WARD. And of that, I would judge that about 900, one-half, were Choctaws and Chickasaws.

Senator BRANDEGEE. What, on an average, would you estimate the testimony to be; that is, the amount of pages, the size of the transcript?

Mr. WARD. Aside from the big cases, not to exceed three pages—aside from those large cases that I have mentioned, because in the closing days there were what we called memorandum cases—that is, as a rule; I do not mean all of them.

Senator BRANDEGEE. What is a memorandum case?

Mr. WARD. A memorandum case is where an application for enrollment is made after the time has expired within which enrollment could be made.

Senator DAVIS. I asked you for certain information the other day which you said you would try to get from the Indian Territory. Have you got it?

Mr. WARD. No, sir; I have telegraphed for it twice.

Senator DAVIS. You can not get the information?

Mr. WARD. Oh, yes; I can get the information, and the very minute we get it the Office will send it to the committee.

Senator DAVIS. You have not got it now?

Mr. WARD. No, sir.

The CHAIRMAN. I would like to ask you a question. What do you know about the facts in the McGee case? Just state all you know about that case.

Mr. WARD. I know the McGee case because, as I now recollect it, I personally handled that case in the wind up, not originally, but when the enrollment of what we term newborn children—that is, a child born after September 25, 1902, I believe—came up; the nine children, and I think the mother, had been enrolled as Chickasaw freedmen. The Commission enrolled a newborn child as an Indian, and when it reached our Office, we took the position that if the newborn child was entitled to enrollment as an Indian the other children were entitled to enrollment as Indians, but that the newborn child was not entitled to enrollment at all because she or he—I have for-

gotten which it was—was a Chickasaw freedman and Chickasaw freedmen were not citizens of the nation. The newborn children came in under the act of April 26, 1906, and the Supreme Court is my authority for saying that the Chickasaw freedmen are not citizens of the nations. I believe—and I am not sure about this—that all the names were transferred to the blood roll.

Senator SUTHERLAND. The nine names?

Mr. WARD. The nine names.

Senator SUTHERLAND. Including the newborn child?

Mr. WARD. Including the newborn child. That is my recollection of it, that they were transferred, all of the names, to the blood roll.

Senator CURTIS. Can you find out for certain about that?

Mr. WARD. Yes, sir.

Senator CURTIS. I wish you would advise the chairman as to that.

Mr. WARD. Very well.

Senator CURTIS. And if so, when it was done.

Mr. WARD. Yes, sir. I can tell by looking at the roll.

Senator CURTIS. Did the Secretary overrule your office with regard to that child?

Mr. WARD. The Secretary overruled our office.

Senator CURTIS. In regard to the child?

Mr. WARD. In regard to the child.

Senator SUTHERLAND. Do I understand that the eight children were on the freedmen roll?

Mr. WARD. The nine children were enrolled as Chickasaw freedmen. They were born prior to September 25, 1902.

Senator SUTHERLAND. This was a tenth child?

Mr. WARD. This was a tenth child, born after that date.

Senator SUTHERLAND. The nine, then, were on the freedmen roll?

Mr. WARD. Yes, sir, and I think the mother.

Senator SUTHERLAND. And the Secretary finally ordered that they should be put upon the Indian roll, being Indians of blood?

Mr. WARD. Yes, sir; that is my recollection; I am not sure about it.

Senator SUTHERLAND. Including the tenth child?

Mr. WARD. Yes, sir; I will look that up, however.

Senator DAVIS. Now, Mr. Ward, what was the name of the tenth child, the newborn child?

Mr. WARD. I do not remember. If you know the name and will give it, I will probably remember. I know that it was McGee.

Senator DAVIS. You said that you examined personally and passed upon these cases. Now, tell us the name of that newborn child that you have talked about so learnedly?

Mr. WARD. I examined hundreds, but I could not call the names.

Senator DAVIS. You have had your attention evidently called to this matter. Now tell us the name of that child?

Mr. WARD. I had not before that day.

Senator DAVIS. You have not had your attention called to this family?

Mr. WARD. I have not.

Senator DAVIS. Have you not had your attention called to this family by the fact of the remarks that I made upon the floor of the Senate recently?

Mr. WARD. I have not read your remarks.

Senator DAVIS. You did not do me that honor?

Mr. WARD. Well, I would not mind doing you the honor, but I have not had the time.

Senator DAVIS. You are a very busy man.

Senator SUTHERLAND. Have your remarks been printed, Senator Davis?

Senator DAVIS. Yes; in the press, if not in the Record.

Mr. WARD. And, as a matter of fact, I do not read the Record.

Senator DAVIS. You can not tell us the name of this newborn child?

Mr. WARD. I can not tell you the name of that newborn child.

Senator DAVIS. Do you not know as a matter of fact that the mother of these McGee children was of negro blood?

Mr WARD. That is my recollection.

Senator DAVIS. And do you not know that the father was an Indian?

Mr. WARD. That is my recollection.

Senator DAVIS. And do you not know that this citizenship court enrolled one of these children as an Indian and nine as niggers?

Mr. WARD. No, sir; I do not recollect that.

Senator DAVIS. Does not that record show it [handing witness printed record]?

Mr. WARD. I do not know; I have not seen it.

Senator DAVIS. Examine it and see. Do you not know that there are many cases just like that?

Mr. WARD. The rule was to enroll——

Senator DAVIS. Just answer the question.

Mr. WARD. I am going to answer the question in my own way. I am doing the testifying here.

Senator DAVIS. And I am doing the questioning.

Mr. WARD. And I am doing the answering.

Senator DAVIS. Do you not know that there are many cases just like that?

Mr. WARD. I do not; there may be, I do not say that there are not such cases, but they have not been brought to my attention.

Senator DAVIS. That was brought to your attention?

Mr. WARD. Yes, sir; and I have given you the history of this case.

Senator DAVIS. Just examine that for a minute or two and see if the mother of these children was not a negro and the father an Indian?

Mr. WARD. That is my recollection of it.

Senator DAVIS. Does not the record show it there? Just turn over the pages if you do not know how to examine it.

Mr. WARD. I do not need your advice.

Senator DAVIS. You probably would profit by it, if you were to take it.

Mr. WARD. Not from past experience. It would take some time to read this record—but as I recollect it now——

Senator DAVIS. Take all the time you want. You are the law expert of the office.

Mr. WARD. This case was not before the citizenship court, as I recall it, but it may have been.

Senator DAVIS. You do not know anything about that case, do you?

Mr. WARD. I do not recollect that it was.

Senator DAVIS. And you were talking very learnedly here about a case that you do not know anything about.

The CHAIRMAN. Take your time and examine it thoroughly; we have plenty of time.

Senator DAVIS. Have you found what you are looking for?

Mr. WARD. I have not found what you asked me about. When I go back to the Office I will examine the record in the case and prepare a letter——

Senator DAVIS. I would rather you would refer to the record than prepare a letter.

Mr. WARD. I will send a certified copy of the record if you want it.

Senator DAVIS. I do want it. You are talking about something that you do not know anything about.

Mr. WARD. I want to make this explanation. If the case is not contested, that is what we call a straight case. We knew nothing about it until it came up with the name on the roll; only the contested cases come up. I do not think that the enrollment of the nine children and the mother was contested. If the enrollment is not contested there is not any record in our Office except the roll. As I recollect it the youngest child was contested—either Mr. Bixby raised the question, or the tribe, and I believe the only record with reference to that child is Mr. Bixby's letter. That is the correspondence. I am not sure that there is no testimony.

Senator DAVIS. Now, Mr. Ward, taking it for granted and assuming that the father of these children was an Indian and the mother was a negro, how should those children be enrolled?

Mr. WARD. Under the law as freedmen.

Senator DAVIS. They would take the status from the mother?

Mr. WARD. They would take the status from the mother.

Senator DAVIS. Do you not know to the contrary, that they should be enrolled as Indians?

Mr. WARD. I do not, and I will tell you why. The law of 1896 said that in preparing the rolls the Commission to the Five Civilized Tribes should follow the usages, customs, and laws of the tribes. It was the custom and law of the tribes to enroll the children of a freedman mother with the mother, even though the father was an Indian.

Senator DAVIS. Will you cite me to that law?

Mr. WARD. You will find those laws published in a report on H. R. 15419, I think it is, in the hearings before the House committee on that bill.

The CHAIRMAN. On this nation?

Mr. WARD. Yes, sir.

Senator CURTIS. When was the date of the act?

Mr. WARD. 1896.

Senator DAVIS. Was that the Curtis Act?

Mr. WARD. No, sir; the Curtis Act is 1898.

Senator DAVIS. 1898?

Mr. WARD. It is June 28, 1898; 30 Stats., 495.

Senator DAVIS. Now, do you maintain that children born of an Indian father and a negro mother, or a mother tainted with nigger blood, should be enrolled as nigger Indians?

Mr. WARD. Yes, sir; under the law.

Senator DAVIS. That is all I care to ask.

The CHAIRMAN. Do you want to make any further statement, Mr. Ward?

Mr. WARD. There is one statement that I want to make about this roll. I want to explain this to the committee, so that it will fully understand it. There has been a good deal of talk about our not having enrolled people who were entitled to enrollment. I do not know what the talk was about. This is not a roll, and we have never so considered it. It is a list of the names of the persons who have been stricken from the rolls for all reasons, and the way it happened to be prepared was that the Commission to the Five Civilized Tribes could not agree as to the total number on the roll. And then I had the girls go over and check off every name, and, as you can see, it has been press copied. They checked off every name which has been stricken from the various rolls, no matter for what reason, so as to reach a final conclusion as to the total number on each roll, and we sent Mr. Bixby, I think it was, on the 18th of May, 1907, a press copy of this, and in that way we got together.

Now, that is what this is [referring to paper]. I want to say further that this has been right in my charge ever since it was made, and no attorney interested has ever been denied access to it. We have found that a great convenience; we have got an alphabetical index to the list. If an attorney comes in and wants to find out by such and such a name that has been stricken from the roll, we go right to this and get the name.

Senator BRANDEGEE. By the word "this" you mean the document you are holding in your hand?

Mr. WARD. Yes, sir; the document that I am holding in my hand. That is the paper that has been called a roll.

Senator BRANDEGEE. There have been several different sets of these; is that all one roll?

Mr. WARD. No, sir; it is just a list of names that was stricken from the roll—a Choctaw list, a Chickasaw list, a Cherokee list, and a freedman list in each nation and in the Seminole Nation.

Senator BRANDEGEE. Each one of these is a list of the names that have been stricken from the rolls of each tribe?

Mr. WARD. Yes, sir.

Senator BRANDEGEE. When did you commence to make that list?

Mr. WARD. I think we commenced about the 1st of April a year ago.

Senator BRANDEGEE. It consists of the names that have been stricken off from time to time at different dates?

Mr. WARD. Yes, sir; including the intermarried Cherokees in the Cherokee Nation—1,142 of them.

Senator CURTIS. They were taken off by decision of the court?

Mr. WARD. Yes, sir; under the decision in the Red Bird case.

Senator BRANDEGEE. So you do not consider it a roll, but simply a list of names?

Mr. WARD. Yes, sir; it is a wonder that when we got through with it that we did not throw it in the wastebasket, but it is a good thing that we did not.

Senator DAVIS. Just submit that to the stenographer.

Mr. WARD. I will not; if you want that you must get it from the Secretary of the Interior.

Senator DAVIS. What did you bring it here for?

Mr. WARD. I expected that you or some member of the committee would ask the number of names that were stricken from the roll, as was done the other day.

Senator DAVIS. If you did not want to submit that in testimony, what did you bring it here for?

Mr. WARD. I did not want to submit it. What did I bring these other papers here for?

Senator DAVIS. You decline to submit those names to the stenographer to be put in the record, do you?

Mr. WARD. I do, without the consent of the Secretary of the Interior.

Senator DAVIS. Will you try to get that consent?

Mr. WARD. I will not. If the committee wants it, they can ask the Secretary for it.

Senator DAVIS. Why will you not do it?

Mr. WARD. Because it is not my business to tell the Secretary what he shall do.

Senator DAVIS. Will you tell the Secretary of the Interior that we want this list of names to go in the record and see whether or not he will consent?

Mr. WARD. I will not. You may address a communication to him.

The CHAIRMAN. Let me ask a question. Mr. Ward, this list of names that you have just shown the committee, you may state whether or not that list is in the office as in any manner decisive of the rights of anyone.

Mr. WARD. No, sir.

The CHAIRMAN. If I understand you correctly, it is a mere memorandum that you and the others made for your own convenience to keep track of what was on the rolls and not as decisive of the rights?

Mr. WARD. That is all there is to it.

Senator DAVIS. Now, Mr. Ward, did your office have before it when decisions were rendered in the Choctaw and Chickasaw cases the official rolls prepared by the Government officials and agents between 1830 and 1860, a part of which were in the possession of the Secretary of the Treasury and the remainder in the possession of the Secretary of the Interior?

Mr. WARD. I do not know what was in possession of the Secretary of the Treasury, but all rolls which we considered in connection with enrollment were on file with the Commission to the Five Civilized Tribes.

Senator DAVIS. Do you not know that there are some 80 or 90 of those rolls in the Interior and Treasury Departments?

Mr. WARD. I do not.

Senator DAVIS. Tribal rolls?

Mr. WARD. I do not; I do not know how many rolls there are in the Interior and Treasury Departments.

Senator DAVIS. Do you not know that there were only six or seven complete and partial rolls made by the tribes, which were used by the Commission and the Department in making the final rolls, except the Mississippi Choctaw rolls?

Mr. WARD. I do not, because I have never seen them.

Senator DAVIS. Do you not know that you did not have but six or seven complete rolls prepared by the tribes, except the Mississippi Choctaws, when you fixed up these rolls?

Mr. WARD. I do not.

Senator DAVIS. Then what do you know about it?

Mr. WARD. All rolls that were used in connection with the preparation of the final rolls were on file with the Commission to the Five Civilized Tribes. I do not know what rolls they used.

Senator DAVIS. Secretary Garfield, here is a list of names which Mr. Ward says were used as a memorandum by his Department, showing the names which were stricken from the rolls of the various tribes of the Five Civilized Tribes. I asked him to furnish that to the stenographer as a matter of record in this case. Do you object to it? He said he would not do it without your consent.

Secretary GARFIELD. I will have to look it over and see just what the rolls are and see whether there is any reason why it should not be submitted. If there is no reason, I shall be very glad to have it furnished. There may be some reason that I am not advised of at the moment.

Senator DAVIS. He says that it is simply a memorandum of a list of names stricken from the rolls, and is kept simply for the information of the Office, in alphabetical order. Do you know of any reason why that should not go into this record?

Secretary GARFIELD. My impression is that this is a list that I directed should not be published, for the reason that it would have a tendency to promote a great deal of litigation by giving to the attorneys the names of persons stricken from the rolls—attorneys who did not represent those parties originally—and for that reason, I, at the time, did not have this list printed.

Senator DAVIS. Now, Mr. Ward says that any attorney can examine this list at will.

Secretary GARFIELD. Then I am mistaken as to the character of the roll.

Senator DAVIS. Then why do you object to its going into the record?

Secretary GARFIELD. I misunderstood the character of it then. What is it, Mr. Ward?

Mr. WARD. That is a list, Mr. Secretary, of the names stricken from the roll for all reasons, including those eliminated under the opinion of February 19, 1907. It was prepared for the purpose of finding the total for each roll; the Office and Mr. Bixby could not agree as to the aggregate on each roll. Then we went over the rolls and took off each name and furnished Mr. Bixby a press copy of that, and in that way we got together.

Secretary GARFIELD. Mr. Ward, is this the roll that Mr. Leupp and I had a question about, as to whether or not it should be published, or printed rather?

Mr. WARD. No, sir; the rolls you are thinking of were the rolls from 1832 on down.

Secretary GARFIELD. Is there any reason that you know of why it should not be printed?

Mr. WARD. For the very reason that you have stated. It gives the attorneys the opportunity, if you publish that list, to go to these people and get their cases.

Senator DAVIS. Did you not say a moment ago that any attorney could come to your Department and examine those rolls at will and call for any name that he wanted to?

Mr. WARD. Yes, sir; and to any case—not as to the whole business.

Senator DAVIS. If he called for the whole business he could get it, could he not; if he called for every name on the roll he could get them, could he not?

Mr. WARD. That would be up to the Commissioner. He would have to decide.

Senator DAVIS. Suppose he came in and said, "I represent John Smith; I want to see if his name is stricken from the roll;" or suppose he said, "I represent Jim Brown," or this man or that man, including the whole list, could he not get it?

Mr. WARD. No, sir; because how would he get the names?

The CHAIRMAN. You may treat it as the request of the committee for a copy of that list and then make such a report to the committee of your action in the matter as seems proper.

Senator DAVIS. I insist that that list go in the record.

Secretary GARFIELD. I will look this list over and see if there is any good reason with regard to public policy why it should not be given, and will submit it to the committee.

Senator DAVIS. Are there any secrets in your office that the public can not know with reference to the enrollment of the Choctaw and Chickasaw Indians?

Secretary GARFIELD. There are no secrets in a public office that can not be given out at the proper time.

Senator DAVIS. Then why do you not give this information?

Secretary GARFIELD. There are often questions of public policy as to whether or not it is wise to give information at a certain time to be made public.

Senator DAVIS. You have had that roll now for more than two years?

Secretary GARFIELD. I do not know the date of it.

Senator DAVIS. Mr. Ward says so.

Mr. WARD. Oh, no; I think it was completed in April, 1907.

Senator SUTHERLAND. If you will permit me——

Mr. WARD. I want to say positively, if the Senator will excuse me, that it is not a roll, and we do not so consider it.

Senator DAVIS. I know it is not a roll, but it is a list of names that were stricken off after the rolls were completed.

Mr. WARD. I did not say before the rolls were completed.

Senator SUTHERLAND. I was going to make this suggestion. I see no reason why the committee itself should not have access to these names, but I can see some reason why it might not be good policy, or wise policy, to spread it upon the record of this hearing and make it public for the very reason that was suggested by Mr. Ward. I think there is a great deal of force in that suggestion.

Senator DAVIS. That is exactly what I want.

Senator SUTHERLAND. I can see no reason why it might not be submitted to the committee, but I do not think it should be made a matter of public record.

The CHAIRMAN. Mr. Ward has not objected to submitting it to the committee, and it is now practically in the hands of the committee. It was handed by him to the committee for our use. I suggested that

the Secretary might treat this as a formal request from the committee, otherwise it would be a written request of the committee, and that he might answer it now if he desired.

Secretary GARFIELD. As I indicated before, I am perfectly willing at all times that the committee should see this and all other records in my Department, but to prevent an improper action being taken against the interests of the Indians it is not wise that all the information which is contained in the records of the Department, and which the committee may see, should be made public. My feeling is that it is not wise that this list should be published for the reason that I have indicated. There is not a single reason why every member of this committee should not see this list to the end that they may know the action the Department has taken.

Senator SUTHERLAND. I want to say, Mr. Secretary, that I for one clearly agree with you.

Senator DAVIS. And I want to say for one that I entirely disagree with you, for this reason——

Senator DIXON. You think that it would be a matter by which every attorney in Washington would try to make some business out of?

Secretary GARFIELD. It would.

Senator DAVIS. I want to say that I thoroughly disagree with the Secretary for this reason, that the public has a right to know just who have been denied enrollment, and the parties themselves have the right to have it published so that they can protect their own interests, and for that reason I ask the Secretary to submit that list to the stenographer so that it may become a part of this record.

Senator SUTHERLAND. The parties themselves already know whether they have been stricken from the rolls or not, and the public has not any interest in at all.

Senator DAVIS. I think the public has.

Senator SUTHERLAND. The result would be that this information would be given to every lawyer seeking business throughout that country, and he would go among these people stirring up litigation, stirring up strife, and holding them up for petty fees, and all that sort of thing.

Senator CURTIS. I would like to state in this connection, because it comes in with Senator Sutherland's remarks, that I have letters in my possession from that part of Oklahoma formerly the Indian Territory, showing that there are now one or two law firms who are sending out to every person whose name they can secure and asking a very small fee, from $2 to $6 or $10, and assuring them that if they will employ them they will get them on the rolls even if they have been stricken from the rolls; they are going to get the cases all opened up, and for that reason, this being printed as a document, it would simply give them an additional list of people to write them to get from $2 to $10 out of the various parties who would send them the money.

Senator DAVIS. As a Senator and a member of this committee, I ask the Secretary to furnish that list to the stenographer to be printed as a part of the record of this case; you may do as you please.

The CHAIRMAN. Do you care to make any reply to that, Mr. Secretary, either now or by letter?

Secretary GARFIELD. I can reply to that now, Mr. Chairman. I will submit the list for the information of the members of the committee, but not for the purpose of being printed in the record.

Senator SUTHERLAND. Right there I want to ask you—either you or Mr. Ward—approximately how many names there are on this list.

Senator DAVIS. While he is looking I want to say that the Secretary has evidently taken his cue from the chairman. In the beginning he said he did not know whether he had objection to having that printed or not.

Secretary GARFIELD. The Senator will remember that I said that I did not know what the rolls were and I wanted to look it up and see.

Senator DAVIS. You have not looked at 20 names on that list. I will state that I desire the list printed to make whatever use of it I see fit.

Secretary GARFIELD. Then, Mr. Chairman, if that be the case, I will have to withdraw the paper.

Senator DAVIS. I am going to get that roll, if it can be gotten by any legitimate means.

Senator SUTHERLAND. Mr. Ward, can you answer my last question now?

Mr. WARD. There are 2,284 names, exclusive of the intermarried Cherokees that were stricken from the rolls for all reasons—that is double enrollment, dying too soon, and everything of that sort.

Senator SUTHERLAND. This list that you have exhibited to the committee contains 2,284 names, does it?

Mr. WARD. It contains 1,142 more than that; there are about 3,300 names. There were 1,142 intermarried Cherokees stricken off under the decision in the Red Bird case.

Senator SUTHERLAND. Then the list contains thirty-three hundred and some-odd names?

Mr. WARD. Yes, sir.

Senator DAVIS. Mr. Chairman, as I understand that list is submitted for the consideration of the committee, I want the list.

Secretary GARFIELD. I then ask that it be withdrawn, if it is the purpose of Senator Davis, as expressed, to have a copy of that list made to be used publicly.

Senator DAVIS. I am going to use it in my argument in the Senate, and I have a right to do it.

Secretary GARFIELD. Then, I shall ask that the list be returned to me and not presented.

The CHAIRMAN. Then you may take it now, Mr. Secretary.

Senator DAVIS. Does the committee uphold the action of the Secretary in that behalf?

The CHAIRMAN. The Secretary has expressly stated that he placed that list before us for our use here, and until he places it before us in response——

Senator DAVIS. He has placed it before us.

The CHAIRMAN. And until he places it before us in response to the request of the chair, which was formally made, it is the opinion of the chair that we have no right to use it. If the sense of the committee on this matter is desired, we will go into executive session.

Senator DAVIS. No; the chair decided that a formal request was unnecessary, inasmuch as the Secretary was present and that the

Secretary might consider this as a formal request, and suggested to the Secretary, as a way out of the difficulty, that he might submit this roll to the committee, and the Secretary submitted the roll for the use of the committee. Now, I want that roll, as a member of the committee.

The CHAIRMAN. If the gentlemen who are not members of the committee will retire, we will take this matter up in executive session.

EXECUTIVE SESSION OF THE COMMITTEE.

The committee having gone into executive session—

The CHAIRMAN. Senator Davis, do you desire to make any motion?

Senator DAVIS. Yes, sir; I move that the roll submitted by Mr. Ward in the presence of the Secretary of the Interior of the names stricken from the rolls, which, on the suggestion of the chairman, the Secretary submitted to the committee for its use, be left with the committee.

The CHAIRMAN. The Chair wants to disclaim having made any suggestions to the Secretary further than that he might decide the question now or later, as he saw fit.

Senators, are you ready for the question?

Senator TAYLOR. The Secretary, as I understood it, submitted the paper upon the understanding that it should not be made public. That was the condition upon which he agreed to submit it to the committee.

Senator DAVIS. That was not the agreement, as I understand it, in the beginning. That was the suggestion that was brought out by the discussion. The roll was submitted to the committee for its use.

Senator TAYLOR. Well, he has the right to withhold them from the committee.

Senator DAVIS. I think not. Any member of the committee can make any use of them that he deems proper.

Senator BRANDEGEE. Mr. Chairman, I desire it to appear on the record, in order to make a coherent narrative of the way in which this matter arose, that when I asked the Secretary the question as to whether he objected to any member of the committee keeping this roll in case it was submitted to the committee, not thinking that it was an important matter, I suggested that the stenographer should not encumber the record by taking that down; but it led up to this matter, so that in order to make the record complete I make this statement, that in my opinion it would be just as unwise, if it is unwise at all, for a member of the committee to keep this list of names which has been stricken from the rolls and then publish them in the papers, or, as Senator Davis says he intends to do, read it to the Senate, as it would be to have the matter printed in the hearing of the committee, and if it is not wise to publish it to the world it would be equally unwise to let the committee indirectly publish it to the world. The Secretary having said that he withdrew the list from the committee, and it is now in his possession, the question is, Shall we order him to produce it for publication?

The CHAIRMAN. Senator Brandegee, in making your statement you led up to the point to the question you asked the Secretary, and then you digressed without giving his answer. What were you going to say?

Senator BRANDEGEE. As I remember it, the Secretary said in reply to my question—and I thought that part of it was taken down and that it was in the record already—if it is not, I will state that the Secretary stated that in his judgment that indirect way of publication would be just as detrimental to the service as the publication in the records of this hearing. Does that cover your point?

The CHAIRMAN. Yes.

Senator SUTHERLAND. My position about it is simply this: I can see that the number of names stricken from the rolls might be material upon some inquiry, but I can not see that the names of individuals would be at all material to any inquiry made by the Senator with reference to this matter.

Senator DAVIS. If you will allow me to interrupt you just a moment I will show you why it is material.

Senator SUTHERLAND. Let me finish, please. And I can see that it would be, in the way suggested by the Secretary himself, very detrimental to the public interests. We all know enough about some of the members of our own profession that they are going about seeking to stir up litigation of this character simply for the sake of fees that they may extort from these people, and I do not think that it is good policy to do that sort of thing. If I am right about that, and if it is unwise to publish it in this proceeding in order that it may go to the public, it is just as unwise to turn this over to a member of the committee and let it be read in the proceedings of the Senate, or published in the Record. It would get just as wide a distribution in that way as it would in this, and perhaps wider, and I do not think that it should be published in any way. I can see no good purpose that can be served by it, and I can see reasons of public policy why it ought not to be published.

Senator TAYLOR. That is not an official document, as I understand it, it is only a memorandum.

Senator SUTHERLAND. It is an indication of what was found.

Senator TAYLOR. It is a memorandum held by the Secretary himself, which is not an official document, and before we vote I want to know whether or not we have any right to call on him for a document that is not an official document, but held by him as a private memorandum for himself.

Senator CURTIS. I think the cutomary call is if it is not incompatible with the public interest, is it not?

The CHAIRMAN. That is the usual form.

Senator CURTIS. That is always the form that is used in asking for information of this kind. That leaves him then to decide whether he will furnish the information. I think that Senator Sutherland covered the point when he said that all that would be necessary would be to submit the paper for our information.

Senator BRANDEGEE. And that has already been done.

Senator CURTIS. Yes; and the names can only assist and aid those attorneys in that section who want to hold up these people for a few dollars—people whose cases have already been tried and acted upon.

Senator DAVIS. Now, I appreciate the remarks of Senator Sutherland. In the ordinary course of events the conclusions which he reaches would be correct, but under the provisions of this bill—I mean the bill removing restrictions—which has been reported favorably, there is a provision there which I think affects the homestead

rights of the Indian, and the homestead rights of the Indian mixed with nigger blood. Now, it has been urged that these all are people of nigger blood, the Choctaws and Chickasaws that have been denied enrollment. For my own information I have a right to know who they are so that I may write to them and investigate to see whether or not they are Indians, or to see whether or not they are niggers. Now, here are some pictures [producing some photographs] which have been furnished me of people that I know are not niggers; they are Indians, and as a member of the committee I have a right to that information—to know whether or not those people are nigger Indians, or whether they are real Indians, what their homestead rights are, and I do not think the committee would be treating me fairly if it denies me this information. I want to try and protect the rights, if I can, of those people.

Senator BRANDEGEE. I want to suggest to the Senator that the Secretary specifically offered to let him look at the list of names, provided he would not publish it.

Senator DAVIS. I can not in a minute look over all the names and keep them in my mind. I have got to have a list of them.

Senator BRANDEGEE. Of course that is true. I want to suggest again that the Secretary has not yet declined, and I do not think he would decline, to give Senator Davis for his personal use a complete list of those names upon his promise that he would not give them to anybody else.

Senator DAVIS. I will not promise that.

Senator SUTHERLAND. Senator Davis, as I understood it, expressly said——

Senator DAVIS. I said that I would use it on the floor of the Senate, and that is what I intend to do.

Senator SUTHERLAND. That you would use it on the floor of the Senate and publish the entire list of names.

Senator BRANDEGEE. It is not simply getting the list of the names of those people so that you could correspond with them?

Senator DAVIS. It is for both purposes, and after I get it I can use it as I think proper. I do not think the committee would treat me properly to deny me this information, but I know that I am the only man who will vote for the proposition, and I now ask a vote.

Senator TAYLOR. I want to vote justly and fairly. If the Secretary has a memorandum and declares to the committee that that memorandum ought not to be published, looking to the general welfare of the Indians, it seems to me as if he has a right to withhold any memorandum that he chooses.

Senator BRANDEGEE. I want to say, in view of Senator Davis's remark, that he does not think the committee would be treating him fairly if they did not vote for his motion, that I intend to vote against his motion, and I want to disavow of being discourteous to the Senator and only took occasion to express my honest convictions with respect to this particular matter.

The CHAIRMAN. More than that, as the chairman of this committee, I will go to any extent——

Senator DAVIS. Except to vote for the motion.

The CHAIRMAN. To get any information Senator Davis desires for his use; any evidence in the Department of the Interior bearing on the question of who is entitled to enrollment.

Senator DAVIS. I ask for the yeas and nays.

The question being taken by yeas and nays, the result of the vote was announced—yeas 1, nays 6.

So the motion of Senator Davis was rejected.

Senator DAVIS. Now, Mr. Chairman, I move that we adjourn to some day that will suit the convenience of the committee.

The CHAIRMAN. The chair will suggest that it will be in order for some member of the committee to move that the proceedings had in executive session be published in the regular record.

Senator BRANDEGEE. I make that motion.

The motion was agreed to, and the committee thereupon adjourned until Monday, May 4, 1908, at 10 o'clock a. m.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 484.

LOSS OF SPANISH MARKETS FOR PHILIPPINE SUGAR AND TOBACCO BY REASON OF AMERICAN OCCUPATION.

Mr. TELLER presented the following

DATA REFUTING THE STATEMENTS THAT BY REASON OF AMERICAN OCCUPATION THE MARKETS OF SPAIN HAVE BEEN LOST TO THE PHILIPPINES.

MAY 15, 1908.—Ordered to be printed.

For six years past there has been more or less discussion as to the effect which American occupation of the Philippines has had on the Spanish markets for Philippine sugar and tobacco.

FIRST ERRONEOUS PUBLIC STATEMENT.

The first erroneous public statement on this subject was made in the 1902 report of the Taft Philippine Commission, volume 1, page 7, which reads as follows:

We think that a 50 per cent reduction will not give any substantial relief and that nothing short of 75 per cent will accomplish a useful purpose. It is a mistake to suppose that the severance of these islands from Spain has made no difference in the markets to which their tobacco and sugar growers may look. On the contrary, with the separation from Spain the sugar and tobacco growers have been deprived of markets which were of great assistance to them, and it seems only fair and just that the United States should substitute its own markets for the Spanish markets.

STATEMENT REFUTED.

The above statement of the Taft Philippine Commission was refuted in data prepared by Mr. Truman G. Palmer, and submitted to the United States Senate in a speech by Hon. Charles H. Dietrich, of Nebraska, February 13, 1903, as follows (see p. 2114 of the Congressional Record):

If, in addition to their own frank admissions, any evidence were needed to show that our Philippine Commissioners are working solely in the interest of those islands, the following paragraph from page 7 of the Commission's last report, November 1, 1902, would supply it:

"We think that a 50 per cent reduction will not give any substantial relief and that nothing short of 75 per cent will accomplish a useful purpose. It is a mistake to suppose that the severance of these islands from Spain has made no difference in the markets to which their tobacco and sugar growers may look. On the contrary,

with the separation from Spain the sugar and tobacco growers have been deprived of markets which were of great assistance to them, and it seems only fair and just that the United States should substitute its own markets for the Spanish markets."

The above misstatement of fact is but an echo of what was heard last year from similar officers in relation to Spain's former West Indian possession and has even less foundation, as is shown by the figures.

It is not for one moment to be supposed that this was a willful misstatement, but that it was a misstatement and is exceedingly misleading is a fact, nevertheless.

From page 1405 of the November, 1902, Monthly Summary of Commerce and Finance, Treasury Department, I reproduce the following figures concerning the Spanish imports of sugar from the Philippines, and alongside of the Spanish imports give Willett & Gray's figures of the total Philippine exports, the Spanish imports being in metric tons of 2,204.6 pounds, the Philippine exports in long tons (2,240 pounds):

Year.	Philippine sugar exports.	Spanish imports of Philippine sugar.	Year	Philippine sugar exports.	Spanish imports of Philippine sugar.
1883	217,719	7,421	1892	246,941	2,844
1884	122,925	8,648	1893	261,519	2,829
1885	203,491	4,162	1894	194,319	3,987
1886	185,799	5,281	1895	230,923	5,299
1887	179,149	4,403	1896	229,914	3,618
1888	185,308	4,579	1897	202,093	2,752
1889	218,926	5,841	1898	177,695	299
1890	147,526	3,273	1899	93,054	2
1891	166,414	1,870	1900	62,744	.....

From page 40 of Bulletin No. 14, Trade of the Philippine Islands, by Mr. Frank H. Hitchcock, chief section of foreign markets, Department of Agriculture, it appears that from 1888 to 1892 the Philippines averaged to sell to the continent of Europe just 1.97 per cent of their sugar exports, and from 1893 to 1897, 1½ per cent.

From this it would appear that we had not robbed the Philippines of any considerable market for their sugar, Governor Taft to the contrary notwithstanding.

In regard to tobacco, from the fact that Spain for many years compelled the Filipinos to raise tobacco and sell it to the Spanish authorities at a price fixed by those authorities it would not be strange if that market was now closed to the Filipino product.

Such, however, is not the case. In fact, Europe is to-day taking a greater percentage of the total Philippine exports of tobacco than it did under the Spanish régime.

Mr. Hitchcock does not give the figures for Spain alone, but bunches the continent of Europe. The following Philippine tobacco export figures from 1888 to 1897 are from Mr. Hitchcock's book (p. 41). The figures for 1900 to 1902 are from pages 1364 to 1365 of the June, 1902, Monthly Summary of Commerce of the Philippine Islands, Bureau of Insular Affairs, War Department.

Year.	Total exports.	Exports to continent of Europe.	Year.	Total exports.	Exports to continent of Europe.
	Pounds.	*Pounds.*		*Pounds.*	*Pounds.*
1888	20,555,550	20,209,464	1895	23,015,994	22,219,782
1889	20,728,134	19,338,690	1896	20,295,144	19,061,964
1890	18,183,234	17,741,778	1897	31,577,670	25,034,472
1891	19,998,834	19,066,452	1900	14,010,356	11,515,451
1892	25,936,968	25,362,504	1901	17,929,100	17,788,788
1893	23,507,328	21,870,840	1902	21,044,615	20,470,810
1894	18,666,816	17,214,438			

Average per cent to Europe:

1888–1892	96.51
1893–1897	90.94
1900	82.1
1901	99.2
1902	97.2
Average yearly per cent to Europe 1900 to 1902	92.8

One and one-half per cent loss in the Spanish market for sugar and 7 per cent gain in the European market for tobacco is the sole warrant for the statement published by the Philippine Commission that "with the separation from Spain the sugar and tobacco growers have been deprived of markets which were of great assistance to them, and it seems only fair and just that the United States should substitute its own markets for the Spanish markets."

DIETRICH SPEECH MADE PUBLIC DOCUMENT.

On February 27 the chairman of the Senate Committee on the Philippines procured the printing of the Dietrich speech as a Senate document (Congressional Record, p. 2745):

Mr. LODGE. Mr. President, I ask unanimous consent that the remarks made by the Senator from Nebraska [Mr. Dietrich] on the 13th instant, in which are included various tables and statistics relating to expenditures, etc., in the Philippine Islands, may be printed as a document.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and that order will be made.

As published in pamphlet form this speech is Senate Document No. 186, Fifty-seventh Congress, second session; 112 pages.

DIETRICH SPEECH REPRINTED FOR WAR DEPARTMENT.

On March 3, 1903, the Senate printed 1,000 extra copies of the above document for the use of the War Department (p. 2956, Congressional Record):

On motion of Mr. Lodge, it was

"*Ordered*, That 1,000 copies of Senate Document No. 186, Fifty-seventh Congress, second session, be printed for the use of the War Department."

STATEMENT REFUTED BEFORE COMMITTEE ON WAYS AND MEANS.

When Mr. Truman G. Palmer, secretary of the American Beet Sugar Association, was before the House Committee on Ways and Means January 24, 1905, he again alluded to the error of the Taft Philippine Commission, the following being from his oral testimony (p. 42 of the Hearings):

Mr. PALMER. The Philippine Commission report of November 1, 1902, said:

"We think that a 50 per cent reduction will not give any substantial relief, and that nothing short of 75 per cent will accomplish a useful purpose. It is a mistake to suppose that the severance of these islands from Spain has made no difference in the markets to which their tobacco and sugar growers may look. On the contrary, with the separation from Spain the sugar and tobacco growers have been deprived of markets which were of great assistance to them, and it seems only fair and just that the United States should substitute its own markets for the Spanish market."

From page 40 of Bulletin No. 14, Trade of the Philippines, by Mr. Frank H. Hitchcock, of the Department of Agriculture, it appears that from 1888 to 1892 the Philippines averaged to sell to the continent of Europe just 1.97 per cent of their sugar exports, and from 1893 to 1897 1½ per cent. So I contend that on sugar we have not robbed the Philippines of any rich European market, and on tobacco the European trade has absolutely increased 8 per cent since American occupation, so that there should not be any sentiment about having taken away the American market, which we did not.

SECRETARY TAFT REITERATES STATEMENT IN PART.

When Secretary of War Taft appeared before the Committee on Ways and Means on January 28, 1905, he alluded to this subject as follows (p. 186 of the Hearings):

The truth is that I am not here with the hope that the islands are going to become sugar islands. I shall be entirely content if the sugar industry is restored to the condition that it had in 1893 and 1894. We are here to save the sugar planters and to help them back to that condition in which they were before 1898, and under the Spanish régime, when they enjoyed a differential of 3 cents a pound on sugar imported into Spain over all the non-Spanish world, an advantage now wholly denied them.

And again, on page 226:

The Spanish market has been practically lost since the American occupation of the Philippine Islands, for during the former régime the tobacco monopoly in Spain was obliged by the Government to buy a certain quantity of Philippine leaf, for the maintenance of which clause there is naturally now no particular reason.

SECRETARY TAFT REITERATES STATEMENT IN FULL.

At the close of the hearings before the Committee on Ways and Means, Secretary Taft filed with the committee a final statement, in which he again covered the subject, as follows (pp. 267–268 of the Hearings):

Second. Under the Spanish régime the Philippine Islands were granted a differential of approximately 3 cents a pound on sugar introduced from the Philippines into Spain, an advantage of that amount of duty over the importations of sugar from all the non-Spanish parts of the world.

With respect to tobacco, the Spanish Government maintained a monopoly in the manufacture and sale of tobacco, and took all of its supply from Cuba and the Philippine Islands. Since that time, as I am informed, the Spanish Government has purchased its tobacco where it could find it cheapest, and the Philippine markets have not necessarily been given the benefit of the Spanish patronage. The change of sovereignty, therefore, has taken away from the tobacco growers and manufacturers of the Philippine Islands, and the sugar growers of those islands, the monopoly of the valuable market of Spain. The United States is under an obligation to make this deficiency good. In addition to this there has been imposed a heavier tax on tobacco and sugar in Japan and in Australia, which has much reduced the opportunities for profitable sale of both products.

AT KANSAS CITY SECRETARY TAFT ENLARGES STATEMENT.

On November 21, 1905, Secretary of War Taft was the guest of honor of the Kansas City Commercial Club, where he spoke on "The Philippines." Alluding to the loss of the Spanish markets, he said (p. 8 of the official copy of his speech):

It is argued that America is under no obligation to give the Philippines any better market than they had before, and that as they did not have the American market before, there is no reason for them now to complain that they do not have it. This argument is as unfounded as the rest. By law, when the Philippines were under the Spanish régime, from 1882, sugar paid a less rate of duty imported into Spain from Cuba and Porto Rico than it did from foreign countries, and when imported from the Philippine Islands it paid only a one-fifth part of that which it paid when imported from Cuba and Porto Rico. This gave a constant market to both the sugar and the tobacco of the Philippines in Spain, which has now been entirely cut off. Is it possible that we will not be as generous to the Philippines as Spain was, the defects of whose government have formed the chief excuse for our taking over the Philippine Islands to our own control?

STATEMENT AGAIN REFUTED.

Early in January, 1906, in a pamphlet "Facts which should be considered before acting on the Philippine tariff bill," Mr. Truman G. Palmer replied to Secretary Taft's Kansas City speech as follows (pp. 13–14):

HOW THE AMERICAN PEOPLE HAVE BEEN MISLED—SECRETARY TAFT'S STATEMENTS DISPROVED BY THE RECORDS OF HIS OWN DEPARTMENT.

In his November 20, 1905, speech, delivered before the Commercial Club of Kansas City, after stating that the Philippines were granted special tariff favors by Spain, the Secretary of War said (p. 8 of official copy):

"This gave a constant market to both the sugar and tobacco of the Philippines in Spain, which has now been entirely cut off. Is it possible that we will not be as generous to the Philippines as Spain was, the defects of whose government have formed the chief excuse for our taking over the Philippine Islands to our own control?"

This plea for the sympathy of the American people is based on two palpable misstatements of fact, as shown by the records of the Secretary's own Department.

First. The Philippines did not have a market in Spain for their sugar, and consequently were not cut off from it by American occupation. During the entire ten years prior to American occupation Spain took but 35,841 tons of Philippine sugar, this 35,841 tons forming but $1\frac{7}{10}$ per cent of the total Philippine exports of sugar during that period. (See Bulletin No. 14, Department of Agriculture, Section of Foreign Markets, 1898, pp. 40–41, prepared by Frank H. Hitchcock, now First Assistant Postmaster-General.) And as to the inference that we should substitute our sugar market for the Spanish sugar market, which the Secretary would have his hearers believe we have taken from the Philippines, we have already given the Philippines a market for over 50 per cent of her total sugar exports by the present 25 per cent tariff reduction on Philippine sugar; and during the year ending June 30, 1905, the United States purchased more Philippine sugar by 60 per cent than Spain purchased during the entire ten years preceding American occupation. (See Monthly Summary of Commerce with the Philippine Islands, War Department, June, 1905, p. 1467.)

Second. The Spanish tobacco market for Philippine tobacco has not "been entirely cut off," the Secretary to the contrary notwithstanding. For the year ending June 30, 1905, the Philippines exported a total of 16,276,266 pounds of tobacco, of which Spain took 13,455,065 pounds, or over 82 per cent.

PAMPHLET "FACTS" INCORPORATED IN HEARINGS.

On February 1, 1906, when the Philippine tariff bill was being considered by the Senate Committee on the Philippines, the pamphlet "Facts" was introduced, and by request of the chairman was printed as part of the hearings (p. 422 of the Hearings):

The CHAIRMAN. I would like to have that document printed in the record. It is entitled "Facts which should be considered before acting on the Philippine tariff bill." It is by Truman G. Palmer.

The pamphlet occupies pages 590–600 of the Hearings.

TAFT STATEMENT AGAIN REFUTED.

In the final statement of Mr. Truman G. Palmer, under date of February 24, 1906, filed with the Senate Committee on the Philippines and occupying pages 1103 to 1174 of the Hearings, Mr. Palmer again

covered the subject of Spanish markets as follows (pp. 1148–1151 of the Hearings):

LOSS OF SPANISH MARKETS (?).

On page 7 of the Report of the Philippine Commission Secretary Taft told you—

"We think that a 50 per cent reduction will not give any substantial relief, and that nothing short of 75 per cent will accomplish a useful purpose. It is a mistake to suppose that the severance of these islands from Spain has made no difference in the markets to which their tobacco and sugar growers may look. On the contrary, with the separation from Spain the sugar and tobacco growers have been deprived of markets which were of great assistance to them, and it seems only fair and just that the United States should substitute its own markets for the Spanish markets."

On February 13, 1903, Senator Dietrich furnished the Senate some Phillippine statistics, which were printed in the Congressional Record, and which proved the utter fallacy of this groundless statement.

On February 27, 1903, the chairman of this committee asked for and received unanimous consent of the Senate that this matter be made a public document, and on March 3 he requested that an extra thousand copies be printed for the use of the War Department; and hence it would seem that it had had a rather wide distribution.

Officers returning from the Philippines have informed me that they had seen the document at various places throughout the islands.

Notwithstanding this, when Secretary Taft was before the Committee on Ways and Means in January, 1905, he said (p. 226):

* * * "The Spanish market has been practically lost since the American occupation of the Philippine Islands, for during the former régime the tobacco monopoly in Spain was obliged by the Government to buy a certain quantity of Philippine leaf, for the maintenance of which clause there is naturally now no particular reason." * * *

And when he filed his brief with that committee he said (p. 267):

* * * "The change of sovereignty therefore has taken away from the tobacco growers and manufacturers of the Philippine Islands and the sugar growers of those islands the monopoly of the valuable market of Spain. The United States is under an obligation to make this deficiency good."

It will be observed that Secretary Taft plainly stated that prior to American occupation the Philippines had a "monopoly" of the Spanish market for both sugar and tobacco.

In his speech delivered on November 21, 1905, before the Commercial Club of Kansas City, the honorable Secretary of War said (p. 8 of official copy):

"It is argued that America is under no obligations to give the Philippines any better market than they had before, and that as they did not have the American market before, there is no reason for them now to complain that they do not have it. This argument is as unfounded as the rest. By law when the Philippines were under the Spanish régime, from 1882, sugar paid a less rate of duty imported into Spain from Cuba and Porto Rico than it did from foreign countries, and when imported from the Philippine Islands it only paid a one-fifth part of that which it paid when imported from Cuba and Porto Rico. This gave a constant market to both the sugar and the tobacco of the Philippines in Spain, which has now been entirely cut off. Is it possible that we will not be as generous to the Philippines as Spain was, the defects of whose government have formed the chief excuse for our taking over the Philippines Islands to our control?"

The honorable Secretary of War in these various statements left nothing to the imagination. He stated plainly that prior to American occupation, owing to special tariff concessions, Spain furnished the market for both Philippine tobacco and Philippine sugar, and that now, owing to American occupation, the Spanish market for both of these products has been "entirely cut off." These statements are plain and positive, and our sense of justice is appealed to in order to create a sentiment in favor of reducing our tariff on Philippine sugar and tobacco.

Now, what are the facts concerning the Spanish market for Philippine tobacco, which the honorable Secretary says has been entirely cut off? I submit herewith some Government tables showing the utter absurdity of the honorable Secretary's statements, inasmuch as they show that for ten years prior to American occupation Spain took 73 per cent of the Philippine exports of tobacco, and that since American occupation, according to the figures of the Secretary's own Department, Spain has taken a greater proportion of Philippine tobacco by 1.7 per cent than she did before American occupation. Hence, the Philippines have not, as the Secretary says, been

robbed of the Spanish market for their tobacco, and the appeal for sympathy on this score falls to the ground. The figures are as follows:

Philippine tobacco exports.

UNDER SPANISH RULE.

[Summary of Commerce and Finance, July, 1901, p. 181.]

Year.	Total exported.	Total taken by Spain.
	Pounds.	*Pounds.*
1885	14,969,578	12,319,487
1886	12,630,679	11,056,221
1887	11,036,874	7,019,970
1888	25,144,820	19,107,888
1889	22,811,344	17,372,708
1890	22,451,274	17,136,010
1891	22,693,339	17,661,221
1892	30,212,010	20,958,794
1893	26,465,306	15,391,322
1894	17,959,658	12,886,019
Total	206,374,882	150,909,640

Average proportion of total tobacco exports taken by Spain during the above period, 73 per cent.

UNDER AMERICAN OCCUPATION.

[Summary of Philippine Commerce, War Department, June issues, 1900-1905.]

Year.	Total exported.	Total taken by Spain.
1900	$14,010,356	$9,102,729
1901	17,929,100	14,472,911
1902	21,044,615	16,665,735
1903	20,630,168	14,624,495
1904	19,044,290	13,073,021
1905	16,276,266	13,455,065
Total	108,934,795	81,393,956

Average proportion of total tobacco exports taken by Spain during American occupation, 74.7 per cent.

As to the matter of sugar, the figures show up the Secretary's statement on this subject as being equally unfair.

He says that through American occupation we have robbed the Philippines of their Spanish market for their sugar, of which he says they enjoyed a "monopoly."

It would seem as though the honorable Secretary enjoys a rather peculiar and certainly a truly original idea of what constitutes a monopoly. I submit herewith a table which gives the total exports of Philippine sugar, year by year, for thirty-five years prior to American occupation as well as the amount of sugar taken each year by Spain and also that taken by the United States.

It will be observed that the greatest proportion of any single year's Philippine sugar crop which Spain took during this entire period was exactly 6½ per cent, and that during the entire period Spain purchased only 2.2 per cent of the Philippine exports of sugar.

This is the "monopoly" the Philippines had of the Spanish sugar market, and of which we have so cruelly robbed the islands, and for which the honorable Secretary says we are now under obligations to give them free admittance to our markets.

It will be observed that there were two years during each of which the United States purchased more sugar of the Philippines than Spain bought during the entire period of thirty-five years, and that altogether we purchased more than twenty times as much Philippine sugar as Spain did.

Last year the Philippines shipped to the United States nearly half as much sugar as they shipped to Spain during the entire thirty-five years preceding American occupation.

I offer the table herewith, and will say that all of our "obligations to the Philippines" seem to be based on about the same "moral and altruistic" grounds.

Total sugar exports of the Philippine Islands, total to the continent of Europe (including Spain), and total to the United States.

Year.	Total exports.	Exported to United States.	Exported to continent of Europe.	Percentage to continent of Europe.
1862	98,242	10,642	1,162	1.2
1863	75,010	8,209	819	1.1
1864	63,786	15,389	429	.6
1865	55,177	12,480	939	1.7
1866	54,836	13,606	685	1.2
1867	64,560	11,268	1,788	2.7
1868	74,080	14,354	660	.9
1869	68,809	29,044	437	.6
1870	78,213	28,134	2,307	2.9
1871	87,465	40,361	3,592	4.1
1872	95,526	32,219	2,766	2.8
1873	89,337	35,821	4,468	5.0
1874	103,861	51,216	2,270	1.2
1875	126,199	58,549	1,778	1.4
1876	130,431	78,533	1,550	1.2
1877	122,786	64,692	2,253	1.8
1878	117,932	63,902	3,133	2.6
1879	134,805	56,076	2,168	1.6
1880	180,728	102,331	4,465	2.4
1881	211,417	85,368	9,532	4.5
1882	152,230	77,989	3,962	2.6
1883	215,236	149,530	9,215	4.2
1884	122,675	89,628	8,078	6.5
1885	202,791	142,826	4,162	2.0
1886	185,799	134,883	5,445	2.9
1887	179,149	123,497	4,510	2.5
1888	185,308	118,907	4,630	2.5
1889	218,926	147,584	5,122	2.3
1890	147,526	67,511	3,926	2.7
1891	166,410	92,392	2,338	1.4
1892	246,941	81,321	3,082	2.2
1893	261,518	78,771	3,343	1.2
1894	194,320	56,889	4,119	2.1
1895	230,922	59,615	4,009	1.7
1896	229,914	98,178	3,548	1.5
1897	202,092	24,352	1,775	.8
Total	5,355,259	2,464,924	123,035	.....

Percentage of total sugar exports taken by United States 46
Percentage of total sugar exports taken by Continent of Europe, including Spain 2.2

NOTE.—Figures from 1862 to 1888 from Monthly Summary of Commerce and Finance for January, 1902, p. 2753. Figures from 1888 to 1897, from p. 2754, same publication.

It may be pertinent to remark that according to the figures of the War Department the Philippines shipped 57,000 tons of sugar to the United States last year, or as much as Spain purchased for the thirteen years prior to American occupation.

SECRETARY TAFT ADMITS FOUR YEARS OF ERROR.

On February 28, 1906, the closing day of the hearings before the Senate Committee on the Philippines, Secretary Taft made the following explanation to the committee (pp. 1198–1199 of the Hearings):

Now, there is an error which I would like to explain and correct in a statement that I made—for I observe that everything I have said has been examined with a microscope—on the subject of the effect of a change of régime from Spain to the United States upon the sale of sugar and the sale of tobacco by the Philippines. I gathered from a number of gentlemen whom I talked with on the subject in the Philippines that Spain had been their best market, not only for tobacco, but also for sugar, and I was confirmed in that judgment by an examination of the laws of Spain—the customs laws—which provided that the exportations, or the importations rather, from their colonies should pay a very much smaller rate of duty than importations of sugar and tobacco from other countries, and the statement was corroborated

by the further fact that the importations from the Philippines were allowed to come into Spain at one-fifth the duty imposed on importations from Cuba and Porto Rico.

Senator HALE. Were they not very small?

Secretary TAFT. Yes, sir. I was going on to say that I assumed that that was a strong corroboration of the statement that was made that the markets of Spain were now denied to the Philippines. As a matter of fact, further investigation would have shown—and it was an investigation that I was unable to make at the time, although I have since made it—that while this was true with respect to the customs duties, there was imposed in the internal-revenue tax of Spain a differential in favor of the home production of sugar as against the colonial production of sugar, and so the result was that the amount of tonnage of sugar from the Philippines—even though it had the advantage over Cuba and Porto Rico of 80 per cent of the tariff—was only about 5,000 tons.

Senator HALE. So that, taking all of Spain's policy, the discrimination did not in any way increase the amount of sugar that was exported from the Philippines into the old mother country?

Secretary TAFT. Well, it probably increased it to what it was.

Senator HALE. But it was very small.

Secretary TAFT. It was about 5,000 tons. That was immediately cut off, so there is no importation now.

Senator BRANDEGEE. Do I understand that the internal-revenue differential practically counteracted the reduction in the tariff import duty.

Secretary TAFT. I can not tell you that, because I can not make the figures; I do not know exactly. I have them here, and will put them in the record.

Senator BRANDEGEE. Of course it did to a certain extent.

Secretary TAFT. It did to some extent; certainly. The significance, however, of the figures is that the business in the Philippines was feared so much less than Cuba and Porto Rico that they were willing to reduce the duty by 80 per cent and give the Philippines an advantage of 80 per cent in that matter.

Senator BRANDEGEE. Are you able to state that that was entirely due to lack of fear of the competition, or was it in any way due to the capital that was invested in the Philippines by influential Spaniards?

Secretary TAFT. I think the capital invested in Cuba and in Porto Rico was probably a good deal larger than that in the Philippines. It is quite possible that the influence of the friars, which was quite strong, may have had something to do with that favor, but whatever the favor, it amounted to only the importation of 5,000 tons.

Now, with respect to tobacco, it turns out that while since the change of sovereignty they have put on a tax of $2.10 a pound on manufactured tobacco, they have not changed the tax with respect to unmanufactured tobacco. That, however, has been reduced still further—perhaps 18,000,000 to 14,000,000 pounds.

It continues to go in, that 14,000,000 pounds. The statement has been made—I am not able to verify it—that this admission into Spain of Philippine tobacco has been continued temporarily only because of the contract which Spain has with the tobacco company to keep open that trade and not allow it to fail for two or three years. You will find in the record a petition from the growers of Isabela in which they refer to that contract and say it is about to terminate, and in that event they will lose the business of Spain.

PHILIPPINE COMMISSION RENEWS MISSTATEMENT.

The 1906 Report of the Philippine Commission was issued under date of September 15, 1906, and on page 63 of Volume I appears the following statement concerning the loss of Spanish markets:

> They (the people) feel that the islands are being exploited for the benefit of interests in the United States * * * by the imposition of such heavy duties upon sugar and tobacco products imported into the United States as to constitute a total prohibition and to close to the Filipinos the markets of a country which they are asked to consider their own, the favorable Spanish markets before available having been closed to them.

EX-GOVERNOR IDE SPREADS THE MISSTATEMENT BROADCAST.

On October 30, 1906, at San Francisco, Mr. Henry C. Ide, late governor-general of the Philippines, gave an interview to the Asso-

ciated Press in which he said (see New York Tribune and other papers of October 31):

> By annexation we killed the Spanish market for the sugar and tobacco of the Philippines, and by our tariff we barred these products from the United States.

EX-GOVERNOR IDE RENEWS THE MISSTATEMENT.

In an article on "The Philippine Islands" which appeared in the New York Independent of November 22, 1906, Ex-Governor Ide said (p. 1200):

> By annexation we killed the Spanish market for Philippine sugar and tobacco, and our tariff shuts these products from the United States market.

WAR DEPARTMENT CONTINUES TO SPREAD THE MISSTATEMENT.

In an article "Cries of the dependencies," prepared by the War Department and published in the Washington Star of March 15, 1908, Benito Legarda, one of the Delegates to Congress from the Philippine Islands, is represented as saying:

> Our sugar and tobacco had an extensive market in Spain prior to American occupation, a market which is now lost to us on account of the treaty of Paris of 1898.

Q

60TH CONGRESS, 1st Session } SENATE { DOCUMENT No. 485

A STATEMENT OF THE

ATTENDANCE OF MEMBERS OF THE FOREST SERVICE

AT MEETINGS AND CONVENTIONS DURING THE YEAR 1907

LETTER FROM THE SECRETARY OF AGRICULTURE, TRANSMITTING, IN RESPONSE TO SENATE RESOLUTION NO. 157, A STATEMENT OF THE ATTENDANCE OF MEMBERS OF THE FOREST SERVICE AT MEETINGS AND CONVENTIONS DURING THE YEAR 1907

MAY 16, 1908.—Ordered to lie on the table and be printed with accompanying papers

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

LETTER OF TRANSMITTAL.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, May 14, 1908.

To the Senate:

By direction of the President, in pursuance of Senate Resolution No. 157, I have the honor to transmit herewith a statement of the attendance of members of the Forest Service at meetings and conventions during the year 1907.

In my letter of April 27 I stated that attendance upon a large part of the meetings, both official and unofficial, is incidental to the performance of the regular duties of forest officers, and that in many cases the meetings are so local in character that no record of them is preserved at Washington. When expense is incurred in attending such meetings, whether under general or special instructions, an account is rendered in the form prescribed by the Treasury Department, which requires that all items of expenditure incurred during any one month, for which reimbursement is sought, shall be submitted on a single voucher. To segregate expenditures made in order to attend meetings from the other items on these accounts it was necessary to know first on what dates forest officers were in attendance on meetings.

In the case of officers employed in Washington these dates are recorded in Washington, but in the case of forest-supervisors and rangers compliance with the resolution was possible only after receiving special reports from the field officers. Though telegrams were dispatched to the supervisors calling for these reports immediately upon the passage of the resolution, the delays inevitable in securing the information from those most remote have made impossible an earlier compliance with the terms of the resolution.

The detailed statement presents, as accurately as it is possible to do, the facts called for concerning 1,530 individual cases of attendance of Forest Service employees at meetings. Of these, 801, or 52 per cent, represent the attendance at official meetings, or assemblies of forest officers for instruction in matters connected with their administrative work. Of the 729 unofficial meetings attended a considerable proportion were meetings of farmers, addressed either in the course of tours of Congressional districts made in the company of Representatives and at their request, or in connection with farmers' institutes, or at the request of the farmers themselves.

Ever since July, 1898, the Department of Agriculture has been assisting farmers and others, upon request, in the practical care of their woodlands. When an agent is sent at the request of farmers in any region to advise them upon the ground as to the best methods

of handling their holdings, an opportunity often presents itself to give an address on this subject before a meeting of farmers. In the same way addresses asked for by commercial bodies, educational institutions, and other gatherings of citizens are often given by members of the Forest Service in the course of travel undertaken primarily for other purposes. Oftentimes the proper apportionment of the expenditure incurred becomes a matter of judgment. Necessarily, in preparing months afterwards a statement of the expense of attendance at these individual meetings, a doubt sometimes arises as to what part of the cost of travel should be charged to the making of the address. It is believed that the figures as given are on the whole too high rather than too low.

Very respectfully,

JAMES WILSON,
Secretary.

Statement of attendance of members of the Forest Service at meetings and conventions during the year 1907.

[Prepared in pursuance of Senate Resolution No. 157.]

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Jan. 3	D. T. Conkling	Forest supervisor	Unofficial	Livingston, Mont.	Bozeman, Mont.	Bozeman, Mont.	$5.00	In attendance at sheepmen's meeting.
Jan. 5	David Anderson	do	do	Delta, Colo.	Collbran, Colo.	Collbran, Colo.	12.50	In attendance at meeting of Delta County Stock Growers Association.
Do	Thos. E. Jacques	Forest ranger	do	do	Delta, Colo.	Delta, Colo.	None.	Do.
Do	H. K. Porter	Forest supervisor	do	do	do	do	None.	Do.
Do	Henry L. Spencer	Forest ranger	do	do	do	do	None.	Do.
Jan. 9	Findley Burns	Chief, office of publication.	do	Washington, D. C.	Washington, D. C.	Washington, D. C.	None.	Meeting of American Forestry Association.
Do	Quincy R. Craft	Editorial clerk	do	do	do	do	None.	Do.
Do	William L. Hall	Assistant forester	do	do	do	do	None.	Do.
Do	R. S. Kellogg	Chief, office of wood utilization.	do	do	do	do	None.	Do.
Do	Gifford Pinchot	Forester	do	do	do	do	None.	Address before American Forestry Association.
Do	Herbert A. Smith	Editor	do	do	do	do	None.	Meeting of American Forestry Association.
Do	R. Zon	Chief, office of silvics	do	do	do	do	None.	Do.
Do	Charles McMullin	Forest ranger	do	Montrose, Colo.	Delta, Colo.	Delta, Colo.	2.50	In attendance at meeting of Montrose Cattle and Horse Growers Association.
Do	H. K. Porter	Forest supervisor	do	do	do	do	2.50	Do.
Jan. 9-12	T. C. Callister	Forest ranger	Official	Beaver, Utah	Fillmore, Utah	Fillmore National Forest, Utah.	None.	Meeting of rangers and supervisors to discuss national forest business.
Do	J. H. De Long	Assistant forest ranger.	do	do	Circleville, Utah	Beaver National Forest, Utah.	None.	Do.
Do	Sheldon F. Harris	Deputy forest ranger.	do	do	Beaver, Utah	Beaver and Fillmore National forests, Utah.	None.	Do.
Do	S. E. Henrie	Assistant forest ranger.	do	do	Marysville, Utah	Beaver National Forest, Utah.	None.	Do.
Do	William Hurst	Forest supervisor	do	do	Beaver, Utah	Beaver and Fillmore National forests, Utah.	None.	Do.
Do	B. Kenner	Forest ranger	do	do	Scipio, Utah	Fillmore National Forest, Utah.	None.	Do.
Jan. 10	Q. R. Craft	Editorial clerk	Unofficial	Washington, D. C.	Washington, D. C.	Washington, D. C.	None.	Meeting of Missouri Society.
Do	Fred G. Plummer	Geographer	do	do	do	do	None.	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Jan. 12	H. M. Hale	Forest assistant	Unofficial	Memphis, Tenn	Washington, D. C.	Washington, D. C.	$91.90	Address before Tight Barrel Stave Manufacturers' Association.
Jan. 14	Enos A. Mills	Forest agent	do	Mount Alto, Pa	do	do	None.	Address before State Forest Academy.
Jan. 14-16	F. A. Fenn	Forest supervisor	do	Boise, Idaho	Boise, Idaho	Boise, Idaho	None.	In attendance at meeting of Idaho Wool Growers' Association.
Jan. 14-15	J. B. Lafferty	do	do	do	Weiser, Idaho	Weiser National Forest, Idaho.	3.35	Do.
Jan. 15	H. K. Porter	do	do	Grand Junction, Colo.	Delta, Colo	Delta, Colo	10.00	In attendance at meeting of Business Men's Association.
Jan. 15, 16	L. G. Davis	do	do	Rock Springs, Wyo.	Saratoga, Wyo	Saratoga, Wyo	21.25	In attendance at meeting Wyoming Wool Growers' Association.
Do	Zeph Jones	do	do	do	Pinedale, Wyo	Pinedale, Wyo	18.70	Meeting of Wyoming Wool Growers' Association; in attendance by direction of Forester.
Do	Robert E. Miller	do	do	do	Jackson, Wyo	Jackson, Wyo	73.70	Do.
Do	Gifford Pinchot	Forester	do	do	Rock Springs, Wyo.	Washington, D. C.	52.80	In attendance at meeting of Wyoming Wool Growers' Association, by invitation.
Do	A. F. Potter	Inspector of grazing	do	do	Washington, D. C.	do	79.00	Do.
Do	J. T. Wedemeyer	do	do	do	Denver, Colo	do	20.50	In attendance at meeting of Wyoming Wool Growers' Association.
Jan. 17	Enos A. Mills	Forest agent	do	South Chicago, Ill.	Chicago, Ill	do	None.	Address before Woman's Club.
Do	Chas. A. Scott	Forest supervisor	do	Lincoln, Nebr	Halsey, Nebr	Halsey, Nebr	None.	Address before Nebraska State Horticultural Society.
Jan. 17-19	Gifford Pinchot	Forester	do	Salt Lake City, Utah.	Rock Springs, Wyo.	Washington, D. C.	20.00	In attendance at meeting of National Wool Growers' Association, by invitation.
Do	David Barnett	Forest ranger	Official	Salt Lake City, Utah.	Las Vegas, Nev	Charleston National Forest, Nevada.	74.00	Supervisors and rangers to meet with Gifford Pinchot and A. F. Potter to discuss national forest business.
Do	Geo. H. Barney	Forest supervisor	do	do	Escalante, Utah	Aquarius National Forest, Utah.	25.05	Do.
Do	Henry A. Bergh	Forest ranger	do	do	Boise, Idaho	Boise, Idaho	45.00	Meeting of supervisors and rangers to discuss national forest business.

Do.....	E. H. Clark.....	Forest supervisor....	.....do.....	.....do.....	Salt Lake City, Utah.	Salt Lake and Wasatch National Forests, Utah.	4.50	Supervisors and rangers to meet with Gifford Pinchot and A. F. Potter to discuss national forest business.
Do.....	C. F. Cooley.....	.....do.....	.....do.....	.....do.....	Grantsville, Utah...	Grantsville and Vernon National Forests, Utah.	12.00	Do.
Do.....	F. A. Fenn.....	.....do.....	.....do.....	.....do.....	Boise, Idaho.....	Coeur d'Alene National Forest, Idaho.	57.50	Do.
Do.....	Emil Grandjean.....	Forest ranger.....	.....do.....	.....do.....	.....do.....	Payette National Forest, Idaho.	57.50	Do.
Do.....	C. G. Y. Higgins.....	.....do.....	.....do.....	.....do.....	Parowan, Utah.....	Dixie National Forest, Utah.	41.00	Do.
Do.....	Homer Fenn.....	Forest supervisor....	.....do.....	.....do.....	St. Anthony, Idaho.	Henrys Lake National Forest, Idaho.	31.25	Do.
Do.....	T. C. Hoyt.....	Forest ranger.....	.....do.....	.....do.....	Parowan, Utah.....	Sevier National Forest, Utah.	38.55	Do.
Do.....	Wm. Hurst.....	Forest supervisor....	.....do.....	.....do.....	Beaver, Utah.....	Beaver and Fillmore National forests, Utah.	34.90	Do.
Do.....	A. W. Jensen.....	.....do.....	.....do.....	.....do.....	Ephraim, Utah.....	Manti National Forest, Utah.	16.00	Do.
Do.....	Zeph Jones.....	.....do.....	.....do.....	.....do.....	Pinedale, Wyo.....	Yellowstone (Shoshone Div.) National Forest, Wyoming.	48.10	Do.
Do.....	J. B. Lafferty.....	.....do.....	.....do.....	.....do.....	Weiser, Idaho.....	Weiser National Forest, Idaho.	42.80	Do.
Do.....	R. E. Miller.....	.....do.....	.....do.....	.....do.....	Jackson, Wyo.....	Yellowstone (Teton Div.) National Forest, Wyoming.	58.20	Do.
Do.....	Dan S. Pack.....	.....do.....	.....do.....	.....do.....	Payson, Utah.....	Payson National Forest, Utah.	11.55	Do.
Do.....	W. I. Pack.....	.....do.....	.....do.....	.....do.....	Provo, Utah.....	Uinta National Forest, Utah.	11.00	Do.
Do.....	A. F. Potter.....	Inspector of grazing.	Unofficial..	.....do.....	Rock Springs, Wyo.	Washington, D. C..	24.35	Meeting of National Wool Growers' Association.
Do.....	N. E. Snell.....	Forest ranger.....	Official	.....do.....	Salina, Utah.....	Fish Lake National Forest, Utah.	17.00	Supervisors and rangers to meet with Gifford Pinchot and A. F. Potter to discuss national forest business.
Do.....	Orrin Snow.....	Forest supervisor...	.....do.....	.....do.....	Moab, Utah.....	La Sal National Forest, Utah.	39.00	Do.
Do.....	J. H. Squires.....	.....do.....	.....do.....	.....do.....	Logan, Utah.....	Bear River National Forest, Utah.	10.00	Do.
Do.....	John T. Wedemeyer.	Inspector of grazing.	.....do.....	.....do.....	Rock Springs, Wyo.	Washington, D. C..	22.80	Do.
Do.....	Peter Wrensted.....	Forest supervisor...	.....do.....	.....do.....	Pocatello, Idaho....	Cassia National Forest, Idaho.	15.80	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Jan. 18	Chas. A. Scott	Forest supervisor	Unofficial	Lincoln, Nebr	Lincoln, Nebr	Halsey, Nebr	None.	Address before Nebraska Park and Forestry Association.
Jan. 20	Enos A. Mills	Forest agent	do	Elgin, Ill	South Chicago, Ill	Washington, D. C	None.	Address before public schools.
Do	do	do	do	Bloomington, Ill	Elgin, Ill,	do	None.	Address before State University.
Jan. 21	do	do	do	Evanston, Ill	Bloomington, Ill	do	$5.00	Address before Northwestern University.
Do	E. A. Sterling	Chief, office of extension.	do	Elmira, N. Y	Washington, D. C	do	27.50	Address before Y. M. C. A.
Jan. 21, 22, 23, 24.	James A. Blair	Forest supervisor	Official	Denver, Colo	Meeker, Colo	Meeker, Colo	36.85	Meeting of supervisors.
Do	H. H. French	do	do	do	Glenwood Springs, Colo.	Glenwood Springs, Colo.	31.50	Meeting of supervisors to discuss national forest business.
Do	H. H. Harris	Forest ranger	do	do	Santa Fe, N. Mex	Santa Fe, N. Mex	58.75	Do.
Do	William C. Hodge, jr.	Inspector	Unofficial	do	Denver, Colo	Washington, D. C	10.00	In attendance at meeting of supervisors by direction of Forester.
Do	Shep N. Husted	Forest supervisor	Official	do	Estes Park, Colo	Estes Park, Colo	25.00	In attendance at supervisors' meeting.
Do	John Kerr	do	Unofficial	do	Magdalena, N. Mex.	Magdalena National Forest, N. Mex.	55.00	In attendance at supervisors' meeting by direction of Forester.
Do	L. F. Kneipp	do	Official	Denver, Colo	Sante Fe, N. Mex	Sante Fe, N. Mex	58.75	Do.
Do	W. R. Kreutzer	do	do	do	Gunnison, Colo	Gunnison National Forest, Colo.	36.70	Do.
Do	E. F. Morrisey	do	do	do	Cache, Okla	Cache, Okla	59.10	Meeting of supervisors to discuss national forest business.
Do	H. K. Porter	do	do	do	Delta, Colo	Delta, Colo	55.00	In attendance by direction of Forester.
Do	Charles A. Scott	do	do	do	Halsey, Nebr	Halsey, Nebr	17.50	Meeting of supervisors.
Do	R. W. Shellabarger	do	do	do	Moffat, Colo	Moffat, Colo	38.05	In attendance at meeting of supervisors by direction of Forester.
Do	Frank R. Sherwin, jr.	Forest ranger	do	do	Denver, Colo	Denver, Colo	None.	Do.
Do	C. G. Smith	Forest assistant	do	do	Saratoga, Wyo	Saratoga, Wyo	16.65	Meeting of supervisors to discuss national forest business.
Do	J. F. Smith	Forest supervisor	do	do	Deadwood, S. Dak	Deadwood, S. Dak	53.60	Do.
Do	F. C. Spencer	do	do	do	Monte Vista, Colo	Monte Vista, Colo	28.30	Do.
Do	A. L. Stroup	do	do	do	Leadville, Colo	Leadville National Forest, Colo.	24.30	Do.

Do.	H. N. Wheeler	do	do	do	Durango, Colo.	Durango, Colo.	60.00	In attendance at meeting of supervisors by direction of Forester.
Do.	Eugene Williams	do	do	do	West Cliffe, Colo.	West Cliffe, Colo.	21.40	Meeting of supervisors to discuss national forest business.
Do.	Gifford Pinchot	Forester	Unofficial	do	Salt Lake City, Utah	Washington, D. C.	21.25	In attendance at meeting of American Live Stock Association, by invitation.
Do.	A. F. Potter	Inspector of grazing	do	do	do	do	54.50	Meeting of American-National Live Stock Association, in attendance by invitation.
Do.	Thomas Hogan	Forest supervisor	Official	do	Kremmling, Colo.	Kremmling, Colo.	21.95	In attendance at stockmen's meeting by direction of Forester.
Jan. 22	J. H. Hatton	Inspector	Unofficial	Brookings, S. Dak.	Brookings, S. Dak.	Missoula National Forest, Mont.	None.	Address before South Dakota Horticultural Society.
Jan. 24	Enos A. Mills	Forest agent	do	Chicago, Ill.	Chicago, Ill.	Washington, D. C.	8.25	Address before Woman's Club.
Jan. 25	do	do	do	Kansas, City, Mo.	do	do	23.40	Address before teachers' club.
Jan. 26	do	do	do	Lawrence, Kans.	Kansas City, Mo.	do	4.60	Address before teachers' association.
Jan. 26, 27	L. G. Davis	Forest supervisor	do	Rawlins, Wyo.	Saratoga, Wyo.	Saratoga, Wyo.	16.00	In attendance at meeting of the Carbon County Wool Growers' Association.
Do.	P. L. Gooldy	Forest guard	do	do	Dixon, Wyo.	Dixon, Wyo.	8.00	Do.
Do.	A. F. Potter	Inspector of grazing	do	do	Denver, Colo.	Washington, D. C.	13.30	Meeting of Carbon County Wool Growers' Association, by invitation.
Do.	C. G. Smith	Forest assistant	do	do	Saratoga, Wyo.	Saratoga, Wyo.	16.00	In attendance at meeting of the Carbon County Wool Growers' Association.
Jan. 28	Enos A. Mills	Forest agent	do	Denver, Colo.	Kansas City, Mo.	Washington, D. C.	27.60	Address before public schools.
Jan. 29	do	do	do	do	Denver, Colo.	do	10.25	Address before woman's club.
Do.	E. A. Sterling	Chief, office of extension.	do	New Haven, Conn.	Washington, D. C.	do	22.05	Address before Connecticut Forestry Association.
Do.	E. F. Tully	Forest ranger	do	Mariposa, Cal.	North Fork, Cal.	North Fork, Cal.	5.00	In attendance at meeting of stockmen.
Jan. 30	Albert Baker	Forest guard	do	Walla Walla, Wash.	Walla Walla, Wash.	Walla Walla, Wash.	6.00	In attendance at stockmen's meeting.
Do.	Otto T. Green	Forest ranger	do	do	do	do	3.00	Do.
Do.	Thomas P. Mackenzie.	do	do	do	do	do	4.00	Do.
Do.	A. F. Potter	Inspector of grazing	do	do	Rawlings, Wyo.	Washington, D. C.	183.95	Meeting of stockmen and forest officers; in attendance by request of the supervisor.
Feb. 1	Enos A. Mills	Forest agent	do	Loveland, Colo.	Estes Park, Colo.	do	11.30	Address before Current Events Club.
Feb. 2	H. N. Wheeler	Forest supervisor	do	Mancos, Colo.	Durango, Colo.	Durango, Colo.	5.00	In attendance at stockmen's meeting.
Feb. 4	do	do	do	Dolores, Colo.	do	do	10.00	Do.
Do.	Enos A. Mills	Forest agent	do	Denver, Colo.	Denver Colo.	Washington, D. C.	12.20	Address before woman's club.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Feb. 5	J. B. Knapp	Timber testing engineer.	Unofficial	Spokane, Wash	Eugene, Oreg	Eugene, Oreg	$68.42	Address before Western Pine Manufacturers Association.
Feb. 5-8	E. S. Armentrout	Deputy forest ranger.	Official	Leadville, Colo	Cascade, Colo	Pikes Peak National Forest, Colo.	26.99	Meeting of rangers and supervisors to discuss national forest business.
Do	N. S. Ashlock	Forest ranger	do	do	Thomasville, Colo	Holy Cross National Forest, Colo.	3.80	Do.
Do	F. A. Blair	Deputy forest ranger.	do	do	Kokomo, Colo	Leadville National Forest, Colo.	None.	Do.
Do	do	Forest supervisor	do	do	Meeker, Colo	White River National Forest, Colo.	10.75	Do.
Do	R. A. Bowen	Assistant forest ranger.	do	do	Fairplay, Colo	Pikes Peak National Forest, Colo.	35.00	Do.
Do	James O. Buchholz	Deputy forest ranger.	do	do	Sulphur Springs, Colo.	Leadville National Forest, Colo.	3.80	Do.
Do	Ernest C. Bunker	do	do	do	Dillon, Colo	do	14.45	Do.
Do	Samuel H. Clay	do	do	do	do	do	14.45	Do.
Do	L. D. Crandall	do	do	do	Howbert, Colo	Pikes Peak National Forest, Colo.	23.40	Do.
Do	William S. Cyphers	do	do	do	Snow, Colo	Holy Cross National Forest, Colo.	6.30	Do.
Do	I. W. Foster	Forest ranger	do	do	Aspen, Colo	do	7.00	Do.
Do	Harry French	Forest supervisor	do	do	Glenwood Springs, Colo.	do	16.25	Do.
Do	E. D. Hepburn	Deputy forest ranger.	do	do	Tarryall, Colo	Pikes Peak National Forest, Colo.	23.40	Do.
Do	A. M. D. Hooper	Assistant forest ranger.	do	do	Bailey, Colo	do	35.00	Do.
Do	T. E. Julien	Forest ranger	do	do	Redcliff, Colo	Holy Cross National Forest, Colo.	.95	Do.
Do	E. N. Kavanagh	Deputy forest ranger.	do	do	Leadville, Colo	Leadville National Forest, Colo.	None.	Do.
Do	W. B. Kelso	do	do	do	Idaho Springs, Colo.	Pikes Peak National Forest, Colo.	29.60	Do.
Do	F. S. McClure	Assistant forest ranger.	do	do	Palmer Lake, Colo	do	27.00	Do.
Do	John McLaren	Forest ranger	do	do	Glenwood Springs, Colo.	Holy Cross National Forest, Colo.	3.60	Do.
Do	Clarence A. Mack	Deputy forest ranger.	do	do	Buena Vista, Colo	Leadville National	3.60	Do.
Do	W. J. Morrell	Forest assistant	do	do	Glenwood Springs, Colo.	Holy Cross National Forest, Colo.	4.86	Do.

Do	Sidney E. Moylle	Deputy forest ranger	do	do	Newcastle, Colo	White River National Forest, Colo.	10.70	Do.
Do	W. W. Mulford	do	do	do	Snow, Colo	Holy Cross National Forest, Colo.	6.00	Do.
Do	J. H. Patterson	do	do	do	Clyde, Colo	Pikes Peak National Forest Colo.	27.00	Do.
Do	J. H. Ramskill	Forest assistant	do	do	Leadville, Colo	Leadville National Forest, Colo.	None.	Do.
Do	Smith Riley	Chief inspector	do	do	Saratoga, Wyo	Washington, D. C.	56.30	Do.
Do	James B. Seaman	Deputy forest ranger	do	do	Meeker, Colo	White River National Forest, Colo.	12.00	Do.
Do	F. R. Sherwin, jr	Forest ranger	do	do	Denver, Colo	Pikes Peak National Forest, Colo.	27.00	Do.
Do	John Shields	Deputy forest ranger	do	do	Meeker, Colo	White River National Forest, Colo.	12.00	Do.
Do	Charles Smith	Assistant forest ranger.	do	do	Newcastle, Colo	do	10.70	Do.
Do	A. L. Stroup	Forest supervisor	do	do	Leadville, Colo	Leadville National Forest, Colo.	None.	Do.
Do	William Walters	Forest ranger	do	do	Sheephorn, Colo	Holy Cross National Forest, Colo.	2.25	Do.
Do	J. K. Whiting	Assistant forest ranger.	do	do	Regoda, Colo	White River National Forest, Colo.	12.00	Do.
Do	Albert H. Williams	Forest ranger	do	do	Avon, Colo	Holy Cross National Forest, Colo.	3.55	Do.
Do	Charles Williams	Deputy forest ranger	do	do	Kokomo, Colo	do	2.00	Do.
Do	T. D. Woodbury	Forest assistant	do	do	Denver, Colo	Pikes Peak National Forest Colo.	27.00	Do.
Do	Mark G. Woodruff	Forest supervisor	do	do	do	do	27.00	Do.
Feb. 5-9	Ernest Britten	Forest ranger	Unofficial	Frenso, Cal	North Fork, Cal	North Fork, Cal	7.75	In attendance at meeting of stockmen.
Do	Ralph Noddin	do	do	do	Frenso, Cal	do	1.50	Do.
Do	C. H. Shinn	Forest supervisor	do	do	North Fork, Cal	do	7.75	Do.
Feb. 6	H. H. Peregoy	Forest ranger	do	Bishop, Cal	Bishop, Cal	Bishop, Cal	2.00	Do.
Feb. 6, 8	P. T. Wrensted	Forest supervisor	do	Oakley, Idaho	Pocatello, Idaho	Pocatello National Forest, Idaho.	20.50	Do.
Feb. 7	Enos A. Mills	Forest agent	do	Denver, Colo	Denver, Colo	Washington, D. C.	8.10	Address before Denver Chamber of Commerce.
Do	G. W. Milham	Forest supervisor	do	Loomis, Wash	Chelan, Wash	Chelan, Wash	3.65	In attendance at meeting of stockmen.
Feb. 8	Enos A. Mills	Forest agent	do	Denver, Colo	Denver, Colo	Washington, D. C.	17.50	Address before high school.
Do	H. H. Peregoy	Forest ranger	do	Independence, Cal	Bishop, Cal	Bishop, Cal	5.00	In attendance at meeting of stockmen.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Feb. 9	Enos A. Mills	Forest agent	Unofficial	Denver, Colo	Denver, Colo	Washington, D. C.	$10.10	Address before Woman's Club.
Do	G. W. Milham	Forest supervisor	do	Conconully, Wash.	Chelan, Wash	Chelan, Wash	6.50	In attendance at meeting of stockmen.
Feb. 10	Enos A. Mills	Forest agent	do	Denver, Colo	Denver, Colo	Washington, D. C.	10.05	Address before Divine Science Club.
Do	G. W. Milham	Forest supervisor	do	Winthrop, Wash	Conconully, Wash.	Chelan, Wash	8.00	In attendance at meeting of stockmen.
Do	H. H. Peregoy	Forest ranger	do	Big Pine, Cal	Independence, Cal.	Bishop, Cal	7.00	Do.
Feb. 11	Enos A. Mills	Forest agent	do	Colorado Springs, Colo.	Denver, Colo	Washington, D. C.	5.25	Address before public schools.
Do	James A. Blair	Forest supervisor	do	Meeker, Colo	Meeker, Colo	Meeker, Colo	None.	In attendance at meeting of White River Stock-Growers' Association.
Do	F. W. Morrill	Inspector	do	Rifle, Colo	Glenwood Springs, Colo.	Denver, Colo	2.60	In attendance at meeting of Grand Valley Horse Growers' Association.
Do	Sydney E. Moylle	Forest ranger	do	do	Rifle, Colo	Meeker, Colo	None.	In attendance at stockmen's meeting.
Do	Smith Riley	Chief inspector	do	do	Glenwood Springs, Colo.	Denver, Colo	2.60	In attendance at meeting of Grand Valley Horse Growers' Association.
Do	Enos A. Mills	Forest agent	do	Colorado Springs, Colo.	Colorado Springs, Colo.	Washington, D. C.	5.75	Address before Polytechnic Society.
Feb. 12	Gifford Pinchot	Forester	do	Washington, D. C.	Washington, D. C.	do	None.	Address before Dolly Madison Chapter, D. A. R.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	do	do	do	None.	Address before Washington Society of Engineers.
Do	Enos A. Mills	Forest agent	do	Pueblo, Colo	Colorado Springs, Colo.	do	6.85	Address before public schools.
Do	E. A. Sterling	Chief, Office of Extension.	do	Buffalo, N. Y	Washington, D. C.	do	30.10	Address before Westminster Club.
Do	G. W. Milham	Forest supervisor	do	Twisp, Wash	Winthrop, Wash	Chelan, Wash	7.25	In attendance at meeting of stockmen.
Feb. 13	Enos A. Mills	Forest agent	do	Canon City, Colo	Pueblo, Colo	Washington, D. C.	8.00	Address before high school.
Feb. 14	do	do	do	Salida, Colo	Canon City, Colo	do	8.00	Address before Woman's Club.
Do	Zeph Jones	Forest supervisor	do	Boulder, Wyo	Pinedale, Wyo	Pinedale, Wyo	None.	In attendance at meeting of stockmen.
Feb. 14-15	H. Croxford	Forest guard	do	North Yakima, Wash.	North Yakima, Wash.	Orting, Wash	7.50	Do.
Do	W. W. Cryder	Forest ranger	do	do	do	do	10.00	Do.
Do	G. F. Allen	Forest supervisor	do	do	Orting, Wash	do	36.01	Do.
Feb. 15	P. G. Redington	Inspector	Official	Leadville, Colo	Denver, Colo	Washington, D. C.	15.00	In attendance at rangers' meeting.

Do	Enos A. Mills	Forest agent	Unofficial	Salida, Colo	Salida, Colo	do	6.75	Address before high school.
Do	R. L. P. Bigelow	Forest supervisor	do	Fort Jones, Cal	Yreka, Cal	Yreka, Cal	5.00	In attendance at meeting of stockmen.
Feb. 16	Enos A. Mills	Forest agent	do	Denver, Colo	Salida, Colo	Washington, D. C	12.25	Address before schools.
Do	G. W. Milham	Forest supervisor	do	Methow, Wash	Twisp, Wash	Chelan, Wash	4.25	In attendance at meeting of stockmen.
Do	Zeph Jones	do	do	Pinedale, Wyo	Pinedale, Wyo	Pinedale, Wyo	None.	Do.
Feb. 17	J. M. Nelson	Forest assistant	do	Twin City, Pa	Pottsville, Pa	Washington, D. C	None.	Instruction to mine foremen as part of cooperative project with Philadelphia and Reading Coal and Iron Company.
Feb. 18	Enos A. Mills	Forest agent	do	Fort Collins, Colo	Denver, Colo	do	13.85	Address before State agricultural college.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Lincoln, Nebr	Washington, D. C	do	36.15	Address before University of Nebraska.
Do	J. M. Nelson	Forest assistant	do	Mahanoy, Pa	Twin City, Pa	do	None.	Instruction to mine foremen as part of cooperative project with Philadelphia and Reading Coal and Iron Company.
Feb. 19	do	do	do	Ashland, Pa	Mahanoy, Pa	do	None.	Do.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Quincy, Ill	Lincoln, Nebr	do	10.90	Address before Illinois State Farmers' Institute.
Do	Enos A. Mills	Forest agent	do	Greeley, Colo	Fort Collins, Colo	do	7.75	Public lecture.
Do	do	do	do	do	Greeley, Colo	do	6.45	Address before high school.
Do	Thos. E. Chidsey	Forest supervisor	do	Heppner, Oreg	Heppner, Oreg	Heppner National Forest.	None.	In attendance at stockmen's meeting.
Feb. 20	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Chicago, Ill	Quincy, Ill	Washington, D. C	4.00	Address before Western Society of Engineers.
Do	Enos A. Mills	Forest agent	do	Denver, Colo	Greeley, Colo	do	9.60	Address before Bryan school.
Do	do	do	do	do	Denver, Colo	do	7.75	Address before Denver Real Estate Exchange.
Do	J. M. Nelson	Forest assistant	do	Shamokin, Pa	Ashland, Pa	do	None.	Instruction to mine foremen as part of cooperative project with Philadelphia and Reading Coal and Iron Company.
Feb. 21	Enos A. Mills	Forest agent	do	Denver, Colo	Denver, Colo	do	8.00	Address before public schools.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Cleveland, Ohio	Chicago, Ill	do	23.25	Address before National Association of Box Manufacturers.
Do	J. M. Nelson	Forest assistant	do	Shenandoah, Pa	Shamokin, Pa	do	None.	Instruction to mine foremen as part of cooperative project with Philadelphia and Reading Coal and Iron Company.
Feb. 22	do	do	do	Pottsville, Pa	Shenandoah, Pa	do	None	Do.
Feb. 23	Enos A. Mills	Forest agent	do	Estes Park, Colo	Denver, Colo	do	9.45	Address before Estes Park Literary Society.
Feb. 25	do	do	do	Longmont, Colo	Estes Park, Colo	do	8.35	Address before high school.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Feb. 26	Enos A. Mills	Forest agent	Unofficial	Boulder, Colo.	Longmont, Colo.	Washington, D. C.	$7.45	Address before Woman's Club.
Do.	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Washington, D. C.	Washington, D. C.	do	None.	Meeting of Washington Society of Engineers.
Do.	Gifford Pinchot	Forester	do	do	do	do	None.	Do.
Feb. 27	H. M. Hale	Forest assistant	do	Shelbyville, Ky.	do	do	32.73	Address before Kentucky State Farmers' Institute.
Feb. 28	S. T. Ezell	Forest guard	do	Moore, Idaho	Mackay, Idaho	Mackay, Idaho	5.37	In attendance at meeting of stockmen.
Do	G. B. Mains	Forest supervisor	do	do	do	do	5.38	Do.
Do.	F. A. Fenn	do	do	Junction, Idaho	Junction, Idaho	Boise, Idaho	1.25	Do.
Do.	Enos A. Mills	Forest agent	do	Cheyenne, Wyo.	Boulder, Colo.	Washington, D. C.	11.65	Address before high school.
Do.	do	do	do	do	Cheyenne, Wyo.	do	7.00	Address before Young Men's Club.
Mar. 1	Gifford Pinchot	Forester	do	New York City	Washington, D. C.	do	None.	Address before Ends of Earth Club.
Do.	Enos A. Mills	Forest agent	do	Enterprise, Kans.	Cheyenne, Wyo.	do	28.20	Address before the Enterprise Woman's Club.
Do.	F. A. Fenn	Forest supervisor	do	Salmon, Idaho	Salmon, Idaho	Boise, Idaho	3.50	In attendance at meeting of stockmen.
Mar. 3	Enos A. Mills	Forest agent	do	Enterprise, Kans.	Enterprise, Kans.	Washington, D. C.	5.00	Address before the Kansas State Federation of Women's Clubs.
Mar. 4	do	do	do	Oklahoma City, Okla.	do	do	16.15	Address before combined meeting of Woman's Club and Chamber of Commerce.
Mar. 5	do	do	do	Fort Worth, Tex.	Oklahoma City, Okla.	do	14.65	Address before Fort Worth University.
Do.	Frank Helfrich	Forest ranger	do	Anderson, Cal.	Sisson, Cal.	Sisson, Cal.	5.00	In attendance at meeting of stockmen.
Mar. 6	Enos A. Mills	Forest agent	do	Fort Worth, Tex.	Fort Worth, Tex.	Washington, D. C.	5.00	Address before Fort Worth high school.
Do.	do	do	do	Dallas, Tex.	do	do	6.45	Address before Dallas high school.
Mar. 6 and 7.	M. L. Erickson	Inspector	do	Lakeview, Oreg.	Lakeview, Oreg.	Portland, Oreg.	None.	Meeting of stockmen and forest officers.
Do	Guy Ingram	Forest supervisor	do	do	do	Lakeview, Oreg.	None.	Do.
Mar. 7	Gifford Pinchot	Forester	do	Washington, D. C.	Washington, D. C.	Washington, D. C.	None.	Address before the National Wholesale Lumber Dealers' Association.
Do.	Enos A. Mills	Forest agent	do	Dallas, Tex.	Dallas, Tex.	do	5.00	Address before the Woman's Club of Dallas.
Do	do	do	do	Austin, Tex.	do	do	13.25	Address before the Texas legislature.

Mar. 8	Smith Riley	Chief inspector	do	Sheep Mountain, Wyo.	Sheep Mountain, Wyo.	Denver, Colo	None.	In attendance at meeting of stockmen.
Do	F. A. Fenn	Forest supervisor	do	Mackay, Idaho	Mackay, Idaho	Boise, Idaho	1.75	Do.
Mar. 8, 9	G. W. Milham	do	do	Wenatchee, Wash	Chelan, Wash	Chelan, Wash	13.75	Do.
Mar. 9	Enos A. Mills	Forest agent	do	Shreveport, La	Austin, Tex	Washington, D. C.	18.25	Address before the Civic Club of Shreveport.
Mar. 10	do	do	do	do	Shreveport, La	do	5.00	Address before the board of education.
Do	do	do	do	do	do	do	5.50	Address before the State Federation of Women's Clubs.
Do	M. J. Anderson	Forest supervisor	do	Provolt, Oreg	Grants Pass, Oreg.	Grants Pass, Oreg.	3.50	In attendance at stockmen's meeting.
Mar. 11	Enos A. Mills	Forest agent	do	Minden, La	Shreveport, La	Washington, D. C.	6.75	Address before the Minden high school.
Do	do	do	do	do	do	do	5.00	Address before the Civic League.
Mar. 12	G. B. Mains	Forest supervisor	do	Challis, Idaho	Mackay, Idaho	Mackay, Idaho	20.10	In attendance at meeting of stockmen.
Do	Enos A. Mills	Forest agent	do	Hope, Ark	Minden, La	Washington, D. C.	7.70	Address before Woman's Club.
Mar. 12, 13	W. E. Herring	Chief, Office of Engineering.	do	Pittsburg, Pa	Washington, D. C.	do	37.55	Address before the American Roadmakers' Association.
Mar. 12–14	J. C. Allred	Forest ranger	Official	Provo, Utah	Provo, Utah	Uinta National Forest.	None.	Meeting of supervisors and rangers to discuss national forest business.
Do	Wm. M. Anderson	do	do	do	do	do	14.16	Do.
Do	W. J. Bowen	do	do	do	Spanish Fork, Utah	do	None.	Do.
Do	Walter E. Brough	Deputy forest ranger.	do	do	Nephi, Utah	Payson National Forest.	2.50	Do.
Do	Grant Carpenter	do	do	do	Vernal, Utah	Uinta National Forest.	17.40	Do.
Do	George A. Fisher	do	do	do	Heber, Utah	do	3.90	Do.
Do	Albert A. Hardy	Assistant forest ranger.	do	do	White Rocks, Utah	do	17.85	Do.
Do	Parley C. Madsen	do	do	do	Mount Pleasant, Utah.	do	3.45	Do.
Do	Dan S. Pack	Forest supervisor	do	do	Payson, Utah	Payson National Forest.	1.00	Do.
Do	John A. Pack	Forest ranger	do	do	Heber, Utah	Uinta National Forest.	7.35	Do.
Do	W. I. Pack	Forest supervisor	do	do	Provo, Utah	do	None.	Do.
Do	Irving P. Snell	Assistant forest ranger.	do	do	Spanish Fork, Utah	do	None.	Do.
Do	Horace A. Stevens	Forest ranger	do	do	Heber, Utah	do	7.35	Do.
Mar. 13	Enos A. Mills	Forest agent	Unofficial	Hot Springs, Ark	Minden, La	Washington, D. C.	5.92	Address before the Lotus Club.
Mar. 14	do	do	do	Little Rock, Ark	Hot Springs, Ark	do	8.20	Address before the Aesthetic Club.
Mar. 14, 15	H. M. Hale	Forest assistant	do	Augusta, Me	Washington, D. C.	do	60.90	Addresses before the State Forestry Association.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907.—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Mar. 15	Enos A. Mills	Forest agent	Unofficial	Pine Bluff, Ark	Hot Springs, Ark	Washington, D. C	$7.50	Address before the high school.
Do	do	do	do	do	Pine Bluff, Ark	do	5.00	Address before the Woman's Club.
Do	G. G. Bentz	Forest supervisor	do	Challis, Idaho	Salmon, Idaho	Salmon, Idaho	38.75	In attendance at meeting of stockmen.
Do	David Anderson	do	do	Basalt, Colo	Collbran, Colo	Collbran, Colo	12.95	In attendance at meeting of Roaring Fork Stock Growers' Association.
Mar. 15, 16, and 17.	Dwight Bushnell	do	do	Whitehall, Mont	Helena, Mont	Helena National Forest.	10.15	In attendance at meeting of stockmen.
Mar. 16	F. A. Fenn	do	do	Weiser, Idaho	Weiser, Idaho	Boise, Idaho	1.50	Do.
Mar. 17	G. B. Mains	do	do	May, Idaho	Challis, Idaho	Mackay, Idaho	23.25	Do.
Do	M. L. Erickson	Inspector	do	Paisley, Oreg	Lakeview, Oreg	Portland, Oreg	8.00	Meeting of stockmen and forest officers.
Do	Guy Ingram	Forest supervisor	do	do	do	Lakeview, Oreg	8.00	Do.
Mar. 18	Enos A. Mills	Forest agent	do	Springfield, Ill	Pine Bluff, Ark	Washington, D. C	31.81	Address before the Springfield Woman's Club.
Do	do	do	do	do	Springfield, Ill	do	5.00	Address before the high school.
Mar. 19	do	do	do	Pekin, Ill	do	do	7.65	Address before the high school at Pekin.
Do	do	do	do	do	do	do	5.00	Address before Woman's Club.
Mar. 20	M. L. Erickson	Inspector	do	Silver Lake, Oreg	Silver Lake, Oreg	Portland, Oreg	5.00	Meeting of stockmen and forest officers.
Do	Enos A. Mills	Forest agent	do	Pullman, Ill	Pekin, Ill	Washington, D. C	8.25	Address before the Saturday Club.
Do	do	do	do	Chicago, Ill	do	do	12.00	Address before the Foster Literary Club.
Mar. 21	do	do	do	Detroit, Mich	Chicago, Ill	do	5.00	Address before the Woman's Club.
Do	do	do	do	do	Detroit, Mich	do	13.75	Address before the teachers' association.
Mar. 22	G. B. Mains	Forest supervisor	do	Clyde, Idaho	Mackay, Idaho	Mackay, Idaho	7.20	In attendance at meeting of stockmen.
Do	Enos A. Mills	Forest agent	do	Charlotte, Mich	Detroit, Mich	Washington, D. C	8.52	Address before the Michigan State Federation of Women's Clubs.
Mar. 23	do	do	do	St. Louis, Mich	Charlotte, Mich	do	11.00	Address before the Monday Club.
Do	H. H. French	Forest supervisor	do	Carbondale, Colo	Glenwood Springs, Colo.	Glenwood Springs, Colo.	1.30	In attendance at meeting of stockmen.
Do	F. W. Morrill	Inspector	do	do	do	Denver, Colo	1.04	Do.
Mar. 24	H. H. French	Forest supervisor	do	Thomasville, Colo	do	Glenwood Springs, Colo.	4.00	In attendance at meeting of lumbermen.

Do.	F. W. Morrill	Inspector	do	do	do	Denver, Colo	4.40	In attendance at meeting of stockmen.
Mar. 24-30	A. L. Andreason	Forest guard	Official	Logan, Utah	Mink Creek, Utah	Bear River National Forest, Utah.	8.50	Meeting of supervisors and rangers to discuss Forest Service business.
Do.	W. W. Clark	Inspector	do	do	Logan, Utah	do	None.	Do.
Do.	J. S. Hite	Forest guard	do	do	Mink Creek, Utah	do	8.50	Do.
Do.	N. B. Hoge	Assistant forest guard.	do	do	Paris, Idaho	do	8.50	Do.
Do.	J. Leatham	Deputy forest ranger.	do	do	Wellsville, Idaho	do	8.50	Do.
Do.	H. O. Rose	Assistant forest ranger.	do	do	Providence, Idaho	do	8.50	Do.
Do.	J. F. Squires	Forest supervisor	do	do	Logan, Utah	do	None.	Do.
Do.	D. O. Theuser	Forest guard	do	do	Western, Idaho	do	8.50	Do.
Mar. 25	Enos A. Mills	Forest agent	Unofficial	South Bend, Ind	St. Louis, Mich	Washington, D. C.	12.52	Address before the Progress Club.
Mar. 26	do	do	do	do	South Bend, Ind	do	5.00	Address before the South Bend High School.
Do.	do	do	do	Goshen, Ind	do	do	6.25	Address before the Goshen High School.
Do.	do	do	do	do	Goshen, Ind	do	5.00	Address before the Beacon Lights' Club.
Mar. 27	do	do	do	Valparaiso, Ind	do	do	6.35	Address before the Woman's Club.
Do.	do	do	do	do	Valparaiso, Ind	do	7.00	Address before the high school.
Do.	J. H. Hatton	Inspector	do	Magdalena, N. Mex	do	Magdalena National Forest.	2.00	In attendance at meeting of Cattle and Horse Protective Association.
Do.	S. T. Ezell	Forest guard	do	Dickey, Idaho	Mackay, Idaho	Mackay, Idaho	3.75	In attendance at meeting of stockmen.
Do.	G. B. Mains	Forest supervisor	do	do	do	do	3.75	Do.
Mar. 28	Enos A. Mills	Forest agent	do	Valparaiso, Ind	Valparaiso, Ind	Washington, D. C.	5.00	Address before the Indiana Normal University.
Do.	do	do	do	Fort Wayne, Ind	do	do	7.65	Address before the Woman's Club.
Mar. 29	do	do	do	Tuscola, Ill	Fort Wayne, Ind	do	12.07	Do.
Mar. 30	do	do	do	St. Joseph, Ill	Tuscola, Ill	do	6.15	Do.
Do.	do	do	do	Urbana, Ill	St. Joseph, Ill	do	9.25	Do.
Mar. 30, 31	Abel C. Berglund	Forest ranger	Official	Townsend, Mont	Bozeman, Mont	Big Belt and Elkhorn National Forests, Mont.	7.70	Meeting of rangers to discuss national forest business.
Do.	Clarence George	Assistant forest ranger.	do	do	Sedan, Mont	do	7.70	Do.
Do.	D. W. Maryott	Deputy forest ranger.	do	do	Townsend, Mont	do	7.70	Do.
Do.	F. C. Stuart	Forest guard	do	do	do	do	None.	Do.
Do.	Charles C. Thompson.	Assistant forest ranger.	do	do	Watson, Mont	do	None.	Do.
Apr. 1	A. W. Jensen	Forest supervisor	Unofficial	Ephraim, Utah	Ephraim, Utah	Ephraim, Utah	None.	Attendance at stockmen's meeting.
Do.	Enos A. Mills	Forest agent	do	Urbana, Ill	Washington, D. C.	Washington, D. C.	6.60	Address before State Federation of Women's Clubs.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Apr. 2	Enos A. Mills	Forest agent	Unofficial	South Chicago, Ill.	Urbana, Ill.	Washington, D. C.	$10.35	Address before Women's Club.
Do.	do	do	do	Chicago, Ill.	Chicago, Ill.	do	None.	Address before Outdoor Art League.
Apr. 3	do	do	do	Aurora, Ill.	do	do	7.75	Address before Women's Club.
Do.	A. W. Jensen	Forest supervisor	do	Manti, Utah	Ephraim, Utah	Ephraim, Utah	.25	In attendance at meeting of stockmen.
Apr. 4	Enos A. Mills	Forest agent	do	Mount Morris, Ill.	Aurora, Ill.	Washington, D.C.	7.95	Address before Mount Morris Academy.
Do.	John W. Hays, jr.	Forest ranger	do	Clyde, Idaho	Mackay, Idaho	Mackay, Idaho	6.10	In attendance of meeting of stockmen.
Apr. 5	Gifford Pinchot	Forester	do	Washington, D.C.	Washington, D.C.	Washington, D.C.	None.	Meeting of Association of Agricultural Colleges and Experiment Stations.
Do.	A. W. Jensen	Forest supervisor	do	Spring City, Utah	Ephraim, Utah	Ephraim, Utah	.15	In attendance at meeting of stockmen.
Do.	Enos A. Mills	Forest agent	do	Oregon, Ill.	Mount Morris, Ill.	Washington, D.C.	6.20	Address before Women's Club.
Apr. 6	do	do	do	Rockford, Ill.	Oregon, Ill.	do	6.30	Do.
Do.	A. W. Jensen	Forest supervisor	do	Mount Pleasant, Utah.	Ephraim, Utah	Ephraim, Utah	4.90	In attendance at meeting of stockmen.
Do.	James A. Blair	do	do	Yampa, Colo.	Meeker, Colo.	Meeker, Colo.	12.10	In attendance at meeting of Egeria Park Stock Growers' Association.
Apr. 7	A. W. Jensen	do	do	Fairview, Utah	Mount Pleasant, Utah.	Ephraim, Utah	2.55	In attendance at meeting of stockmen.
Apr. 8	Enos A. Mills	Forest agent	do	Highland Park, Ill.	Wilmette, Ill.	Washington, D.C.	10.50	Address before combined meeting of Women's Club and high school.
Do.	do	do	do	Wilmette, Ill.	Rockford, Ill.	do	7.25	Address before Women's Club.
Apr. 9	do	do	do	Beloit, Wis.	Chicago, Ill.	do	12.35	Address before Women's Club and high school.
Do.	F. A. Fenn	Forest supervisor	do	Grangeville, Idaho	Kooskia, Idaho	Kooskia, Idaho	8.00	In attendance at meeting of board of county commissioners.
Apr. 10	Enos A. Mills	Forest agent	do	Milwaukee, Wis.	Beloit, Wis.	Washington, D. C.	12.65	Address before Outdoor Art League.
Do.	Dwight Bushnell	Forest supervisor	do	Helena, Mont.	Helena, Mont.	Helena National Forest, Mont.	None.	Meeting of supervisors and rangers to discuss national forest business.
Do.	Albert E. Cole	Forest guard	do	do	do	do	1.50	Do.
Do.	Walter J. Derrick	Deputy forest ranger	do	do	Race Track, Mont.	do	5.70	Do.
Do.	John Keach	Forest assistant	do	do	Helena, Mont.	do	1.50	Do.
Do.	Isador Kiermeyer	Assistant forest ranger.	do	do	Homestake, Mont.	do	6.40	Do.
Do.	E. W. Searcy	Forest ranger	do	do	Helena, Mont.	do	None.	Do.

Do.	Mallory N. Stickney.	Forest assistant	do	do	do	do	None.	Do.
Do.	Lorenzo D. Williams.	Assistant forest ranger.	do	do	Basin, Mont	do	4.30	Do.
Apr. 11	Enos A. Mills	Forest agent	do	Berlin, Wis	Milwaukee, Wis	Washington, D. C.	8.47	Address before Women's Club.
Apr. 12	S. B. Detweiler	Forest assistant	do	College Park, Md	Washington, D. C.	do	None.	Address before Maryland Agricultural College.
Do.	Enos A. Mills	Forest agent	do	Chicago, Ill	Berlin, Wis	do	15.00	Address before Ravenswood Club.
Apr. 13	do	do	do	Casey, Ill	Chicago, Ill	do	12.20	Address before Women's Club.
Apr. 15	do	do	do	Carbondale, Ill	Casey, Ill	do	10.75	Address before normal college.
Apr. 16	do	do	do	Cairo, Ill	Carbondale, Ill	do	6.96	Address before high schools.
Do.	do	do	do	do	Cairo, Ill	do	None.	Address before Women's Club.
Apr. 16, 17	C. H. Adams	Inspector of grazing	do	Miles City, Mont	Miles City, Mont	do	6.00	In attendance at Montana Stock-Growers' Association, by invitation.
Apr. 17	A. W. Jensen	Forest supervisor	do	Orangeville, Utah	Ephraim, Utah	Ephraim, Utah	6.30	In attendance at meeting of stockmen.
Apr. 18	do	do	do	Emery, Utah	Orangeville, Utah	do	6.30	Do.
Do.	Dwight Bushnell	do	do	Deer Lodge, Mont	Helena, Mont	Helena National Forest.	6.20	Do.
Do.	W. J. Derrick	Forest ranger	do	do	Deer Lodge, Mont	do	2.50	Do.
Apr. 19	Enos A. Mills	Forest agent	do	Prescott, Kans	Cairo, Ill	Washington, D. C.	25.65	Address before State Federation of Women's Clubs.
Do.	do	do	do	Linton, Kans	Prescott, Kans	do	8.50	Address before Women's Club.
Apr. 20	A. W. Jensen	Forest supervisor	do	Ferron, Utah	Emery, Utah	Ephriam, Utah	6.25	In attendance at meeting of stockmen.
Apr. 21	Enos A. Mills	Forest agent	do	Nebraska City, Nebr	Linton, Kans	Washington, D. C.	13.35	Address before State Federation of Women's Clubs.
Apr. 22	do	do	do	Lincoln, Nebr	Nebraska City, Nebr	do	9.40	Address before Women's Club.
Apr. 22, 25	Conrad Allies	Deputy forest ranger	Official	North Fork, Cal	North Fork, Cal	Sierra (N) National Forest, Cal.	2.85	Meeting of rangers and supervisors to discuss national forest business.
Do.	Charles H. Shinn	Forest supervisor	do	do	do	do	3.41	Do.
Do.	Robert J. Beard	Forest guard	do	do	do	do	2.85	Do.
Do.	Roy Booth	do	do	do	do	do	2.85	Do.
Do.	George Cavin	Assistant forest ranger.	do	do	Grub Gulch, Cal	do	2.85	Do.
Do.	Joel E. Crane	Forest ranger	do	do	do	do	2.85	Do.
Do.	William W. Gibbons	Assistant forest ranger.	do	do	Shaver, Cal	do	2.85	Do.
Do.	Daniel W. McLeod	Forest guard	do	do	Fresno Flats, Cal	do	2.85	Do.
Do.	Malcolm McLeod	Deputy forest ranger	do	do	do	do	2.85	Do.
Do.	John T. Noddin	do	do	do	Shaver, Cal	do	2.85	Do.
Do.	J. E. Rea	Assistant forest ranger.	do	do	Grub Gulch, Cal	do	2.85	Do.
Do.	Wm. B. Taylor	Forest ranger	do	do	North Fork, Cal	do	2.85	Do.
Do.	H. J. Tompkins	Forest assistant	do	do	do	do	2.85	Do.
Do.	Wm. H. Throver	Assistant forest ranger.	do	do	do	do	2.85	Do.
Do.	Eugene F. Tully	Deputy forest ranger	do	do	do	do	2.85	Do.
Do.	Andie Wofford	do	do	do	do	do	2.85	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Apr. 22-27	H. H. Chivington	Assistant forest ranger.	Official	Sisson, Cal.	Trinity Center, Cal.	Shasta National Forest, Cal.	$15.35	Meeting of rangers and supervisors to discuss national forest business.
Do	George A. Coleman	Forest supervisor	do	do	Sisson, Cal.	do	None.	Do.
Do	D. C. A. Galarneau	Forest assistant	do	do	do	do	10.50	Do.
Do	F. H. Hafley	Forest supervisor	do	do	Weaverville, Cal.	Trinity National Forest, Cal.	23.60	Do.
Do	Frank Helfrich	Assistant forest ranger.	do	do	Sisson, Cal.	Shasta National Forest, Cal.	None.	Do.
Do	L. N. Lorenzen	do	do	do	Cayton, Cal.	do	6.90	Do.
Do	J. W. Patton	do	do	do	Peanut, Cal.	Trinity National Forest, Cal.	23.95	Do.
Do	J. F. Richardson	do	do	do	Sisson, Cal.	Shasta National Forest, Cal.	8.40	Do.
Do	Charles O. Willis	do	do	do	do	do	None.	Do.
Apr. 24	Enos A. Mills	Forest agent	do	Lincoln, Nebr.	Lincoln, Nebr.	Washington, D. C.	8.00	Address before public schools.
Do	do	do	do	Omaha, Nebr.	do	do	7.60	Address before Women's Club.
Apr. 24	do	do	do	St. Joseph, Mo.	do	do	10.45	Address before Women's Club and high school.
Apr. 26	do	do	do	Old Orchard, Mo.	St. Joseph, Mo.	do	10.00	Address before public schools
Apr. 26, 27	N. E. Snell	Forest supervisor	do	Loa, Utah	Salina, Utah	Salina, Utah	10.00	In attendance at mass meeting to consider construction of a telephone line.
Apr. 27	Enos A. Mills	Forest agent	do	Webster Grove, Mo.	Old Orchard, Mo.	Washington, D. C.	10.00	Address before Women's Club.
Do	do	do	do	St. Louis, Mo.	Webster Grove, Mo.	do	5.50	Address before high school.
Apr. 28	do	do	do	do	St. Louis, Mo.	do	8.00	Address before State Federation of Women's Clubs.
Apr. 29	do	do	do	Columbia, Mo.	do	do	10.10	Address before State University.
Apr. 29, 30	A. S. Ireland	Forest supervisor	do	Antelope, Oreg.	Prineville, Oreg.	Prineville, Oreg.	9.30	In attendance at meeting of stockmen.
Do	W. H. B. Kent	Inspector	do	do	Portland, Oreg.	Portland, Oreg.	15.00	Do.
Do	Montie Pearson	Forest guard	do	do	Prineville, Oreg.	Prineville, Oreg.	5.70	Do.
Do	Carl L. Abbott	do	Official	Cliff Pinnacles National Forest.	Monterey National Forest, Cal.	Monterey National Forest, Cal.	None.	Meeting of supervisors and rangers and rangers to discuss national forest business.
Do	J. E. Alverson	Assistant forest ranger.	do	do	Cliff-on-Pinnacles National Forest.	Pinnacles National Forest, Cal.	None.	Do.
Do	S. F. Foster	Forest guard	do	do	Monterey National Forest, Cal.	Monterey National Forest, Cal.	None.	Do.
Do	Sylvester Glikey	do	do	do	do	do	None.	Do.
Do	W. E. Moore	do	do	do	do	do	None.	Do.
Do	James H. Sergeant	do	do	do	do	do	None.	Do.

Do.	N. O. Torstenson	Forest supervisor	do	do	Salinas, Cal.	Monterey and Pinnacles National Forests, Cal.	6.10	Do.
Apr. 30	Dwight Bushnell	do	Unofficial	Deer Lodge, Mont.	Helena, Mont.	Helena National Forest.	6.20	In attendance at meeting of stockmen.
May 1	Enos A. Mills	Forest agent	do	Springfield, Mo	Columbus, Mo	Washington, D. C.	13.45	Address before audience composed of members of Springfield Women's Club and high school.
May 2	H. M. Guthrie	Deputy forest supervisor.	do	Paradise Bar, Oreg.	Paradise Bar, Oreg.	Grants Pass, Oreg.	None.	In attendance at miners' meeting.
Do.	Enos A. Mills	Forest agent	do	Joplin, Mo.	Springfield, Mo	Washington, D. C.	13.60	Address before meeting of Missouri Federation of Women's Clubs.
May 2, 3	A. S. Ireland	Forest supervisor	do	Mitchell, Oreg	Prineville, Oreg	Prineville, Oreg	17.00	In attendance at meeting of stockmen.
Do.	W. H. B. Kent	Inspector	do	do	Portland, Oreg	Portland, Oreg	18.00	Do.
May 2-4	Louis Cutler	Forest guard	Official	Kanab, Utah	Fredonia, Ariz	Grand Canyon (N.) National Forest, Ariz.	10.33	Meeting of supervisors and rangers to discuss national forest business.
Do.	Sheldon F. Harris	Forest supervisor	do	do	do	do	10.33	Do.
Do.	Lorum Pratt	Deputy forest supervisor.	do	do	do	do	10.34	Do.
May 3	E. F. Tully	Forest ranger	Unofficial	Fresno Flats, Cal.	North Fork, Cal.	North Fork, Cal.	5.25	In attendance at meeting of stockmen.
May 3, 4	Charles E. Blush	Forest guard	Official	Kalispell, Mont.	Kalispell, Mont.	Lewis and Clark National Forest, Mont.	4.00	Meeting of supervisors and rangers to discuss national forest business.
Do.	Theodore Christensen.	Assistant forest ranger.	do	do	Lake McDonald, Mont.	do	8.00	Do.
Do.	William H. Daugs	Deputy forest supervisor.	do	do	Kalispell, Mont.	do	None.	Do.
Do.	Peter De Groot	Deputy forest ranger.	do	do	Stryker, Mont.	do	8.00	Do.
Do.	Joseph C. Eastland	do	do	do	Fortine, Mont.	do	9.25	Do.
Do.	Frank C. Geduhn	Assistant forest ranger.	do	do	Waterton Lake, Mont.	do	39.50	Do.
Do.	Fremont N. Haines	Forest supervisor	do	do	Kalispell, Mont.	do	None.	Do.
Do.	Roscoe Haines	Assistant forest ranger.	do	do	Fortine, Mont.	do	4.50	Do.
Do.	Byron W. Hennings	do	do	do	Pleasant Valley, Mont.	do	4.00	Do.
Do.	Fred Herrig	Forest ranger	do	do	Fortine, Mont.	do	8.50	Do.
Do.	Pearl Taylor	Forest guard	do	do	Star Meadows, Mont.	do	4.00	Do.
Do.	Frank F. Liebig	Deputy forest ranger.	do	do	Lake McDonald, Mont.	do	8.00	Do.
Do.	Charles A. Strodtberk.	Forest guard	do	do	Pleasant Valley, Mont.	do	4.00	Do.
May 4	Enos A. Mills	Forest agent	Unofficial	Kansas City, Mo.	Joplin, Mo.	Washington, D. C.	8.15	Address before Kansas City Teachers' Association.
Do.	do	do	do	do	Kansas City, Mo.	do	7.00	Address before Kansas State Federation of Women's Clubs.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. May 4-6	C. H. Adams	Inspector of grazing.	Unofficial	Whitehall, Mont.	Helena, Mont.	Washington, D. C.	$13.10	In attendance at meeting of stockmen.
Do.	Dwight Bushnell	Forest supervisor	do.	do.	do.	Helena National Forest.	18.42	Do.
Do.	Harvey Abbey	Assistant forest ranger.	Official	Quincy, Cal.	Quincy, Cal.	Plumas National Forest, Cal.	2.75	Meeting of rangers and supervisors to discuss national forest business.
Do.	L. A. Barrett	Forest supervisor	do.	do.	do.	Lassen Peak and Diamond Mountain national forests, Cal.	None.	Do.
Do.	G. H. Chamberlin	Assistant forest ranger.	do.	do.	Longville, Cal.	Plumas National Forest, Cal.	10.00	Do.
Do.	J. E. Cooke	Deputy forest ranger	do.	do.	Genesee, Cal.	Diamond Mountain National Forest, Cal.	7.50	Do.
Do.	A. E. Darby	Assistant forest ranger.	do.	do.	Buck, Cal.	Plumas National Forest, Cal.	11.50	Do.
Do.	W. G. Durbin	do.	do.	do.	Quincy, Cal.	Diamond Mountain National Forest, Cal.	None.	Do.
Do.	R. W. Flourney	Deputy forest ranger	do.	do.	Beckwith, Cal.	do.	19.20	Do.
Do.	A. B. Foster	Assistant forest ranger.	do.	do.	Viola, Cal.	Lassen Peak National Forest, Cal.	31.90	Do.
Do.	G. A. Hall	Deputy forest ranger	do.	do.	Crescent Mills, Cal.	Plumas National Forest, Cal.	11.50	Do.
Do.	O. Hedrick	Assistant forest ranger.	do.	do.	do.	Lassen Peak National Forest, Cal.	8.50	Do.
Do.	T. F. Howell	do.	do.	do.	Mineral, Cal.	do.	21.75	Do.
Do.	L. A. H. Kling	Deputy forest supervisor.	do.	do.	Quincy, Cal.	Lassen Peak, Diamond Mountain, and Plumas national forests, Cal.	None.	Do.
Do.	J. C. La Plant	Forest ranger	do.	do.	Burney, Cal.	Lassen Peak National Forest, Cal.	14.65	Do.
Do.	Frank L. Mead	Assistant forest ranger.	do.	do.	Milford, Cal.	Diamond Mountain National Forest, Cal.	2.00	Do.
Do.	Allen R. Powers	Forest assistant	do.	do.	Quincy, Cal.	Plumas National Forest, Cal.	3.75	Do.
Do.	W. G. Robinson	Deputy forest ranger	do.	do.	Meadow Valley, Cal.	do.	6.00	Do.

Do.	F. H. Smith	Assistant forest ranger.	do.	do.	Quincy, Cal.	do.	2.75	Do.
Do.	W. T. Stark	do.	do.	do.	Taylorsville, Cal.	Diamond Mountain National Forest, Cal.	9.65	Do.
May 6	William L. Hall	Assistant forester	Unofficial	Aliceville, Ala.	Washington, D. C.	Washington, D. C.	26.50	Educational tour of the Hon. R. P. Hobson.
Do.	do.	do.	do.	Carrollton, Ala.	Aliceville, Ala.	do.	0.25	Do.
Do.	do.	do.	do.	Reform, Ala.	Carrollton, Ala.	do.	2.00	Do.
May 6-8	John Benson	Assistant forest ranger.	Official	Kanab, Utah	Pine Valley, Utah	Dixie National Forest.	18.05	Meeting of rangers and supervisors to discuss national-forest business.
Do.	Albert De Long	do.	do.	do.	Panguitch, Utah	Sevier National Forest.	10.37	Do.
Do.	William D. Funk	Deputy forest ranger	do.	do.	Manti, Utah	do.	10.37	Do.
Do.	Charles G. Y. Higgins.	Forest supervisor	do.	do.	St. George, Utah	Dixie National Forest.	18.05	Do.
Do.	T. C. Hoyt	do.	do.	do.	Panguitch, Utah	Sevier National Forest.	10.90	Do.
Do.	Martin L. McAllister.	Assistant forest ranger.	do.	do.	St. George, Utah	Dixie National Forest.	18.05	Do.
Do.	W. T. Morris	Forest guard	do.	do.	Parowan, Utah	Sevier National Forest.	7.15	Do.
Do.	Wallace Riddle	Deputy forest ranger.	do.	do.	Manti, Utah	do.	10.37	Do.
Do.	Frank Seaman	do.	do.	do.	Panguitch, Utah	do.	10.37	Do.
Do.	E. H. Smith	do.	do.	do.	Tropic, Utah	do.	10.37	Do.
May 7	Enos A. Mills	Forest agent	Unofficial	Dillon, Mont.	Kansas City, Mo.	Washington, D. C.	57.15	Address before Women's Club of Dillon, Mont.
Do.	William L. Hall	Assistant forester	do.	Kennedy, Ala.	Millport, Ala.	do.	1.50	Educational tour of the Hon. R. P. Hobson.
Do.	do.	do.	do.	Millport, Ala.	Reform, Ala.	do.	1.00	Do.
May 8	do.	do.	do.	Sulligent, Ala.	Vernon, Ala.	do.	1.50	Do.
Do.	do.	do.	do.	Vernon, Ala.	Kennedy, Ala.	do.	None.	Do.
Do.	Enos A. Mills	Forest agent	do.	Butte, Mont.	Dillon, Mont.	do.	2.10	Address before Butte Womans' Club.
May 9	do.	do.	do.	Anaconda, Mont	Butte, Mont.	do.	9.50	Address before Anaconda Womans' Club.
Do.	William L. Hall	Assistant forester	do.	Detroit, Ala.	Sulligent, Ala.	do.	.50	Educational tour of the Hon. R. P. Hobson.
May 10	do.	do.	do.	Hamilton, Ala.	Detroit, Ala.	do.	1.00	Do.
Do.	do.	do.	do.	Winfield, Ala.	Hamilton, Ala.	do.	1.50	Do.
Do.	Enos A. Mills	Forest agent	do.	Deer Lodge, Mont.	Anaconda, Mont	do.	11.90	Address before Deer Lodge Womans' Club.
May 11	do.	do.	do.	do.	Deer Lodge, Mont.	do.	None.	Address before Deer Lodge high school.
Do.	do.	do.	do.	Helena, Mont.	do.	do.	None.	Address before combined meeting of Civic Club and high school.
Do.	William L. Hall	Assistant forester	do.	Fayette, Ala.	Winfield, Ala.	do.	23.00	Educational tour of the Hon. R. P. Hobson.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. May 13	William L. Hall	Assistant forester	Unofficial	Jasper, Ala	Fayette, Ala	Washington, D. C.	$11.15	Educational tour of the Hon. R. P. Hobson.
Do	Enos A. Mills	Forest agent	do	Helena, Mont	Helena, Mont	do	None.	Address before pupils of the public school.
May 14	D. T. Conkling	Forest supervisor	do	Jack Creek, Mont	Bozeman, Mont	Bozeman, Mont	5.00	In attendance at meeting of stockmen.
Do	A. S. Hapner	Forest ranger	do	do	do	do	5.00	Do.
Do	William L. Hall	Assistant forester	do	Livingston, Ala	Jasper, Ala	Washington, D. C.	3.80	Educational tour of the Hon. R. P. Hobson.
Do	do	do	do	Epes, Ala	Livingston, Ala	do	1.00	Do.
May 15	do	do	do	Eutaw, Ala	Epes, Ala	do	1.00	Do.
Do	A. F. Potter	Inspector of grazing	do	Wheatland, Wyo	Cheyenne, Wyo	do	9.50	Meeting of Laramie County Cattle and Horse Growers' Association.
Do	John T. Wedemeyer	do	do	do	Idaho Falls, Idaho	Idaho Falls, Idaho	60.00	In attendance at meeting of Laramie County Stock Growers' Convention.
May 16	Gifford Pinchot	Forester	do	Memphis, Tenn	St. Louis, Mo	Washington, D. C.	None.	Address before Chamber of Commerce.
Do	Enos A. Mills	Forest agent	do	Grinnell, Iowa	Helena, Mont	do	31.00	Address before students and faculty of Iowa College.
Do	William L. Hall	Assistant forester	do	Greensboro, Ala	Eutaw, Ala	do	1.50	Educational tour of the Hon. R. P. Hobson.
May 17	do	do	do	Worthport, Ala	Greenboro, Ala	do	.25	Do.
Do	do	do	do	Tuscaloosa, Ala	Worthport, Ala	do	23.80	Do.
Do	Enos A. Mills	Forest agent	do	Oskaloosa, Iowa	Grinnell, Iowa	do	34.60	Address before the Iowa Federation of Woman's Clubs.
May 18	do	do	do	Ames, Iowa	Oskaloosa, Iowa	do	8.60	Address before Iowa State Agricultural College.
May 23-25	Samuel P. Allen	Deputy forest ranger	Official	Hot Springs, Cal	Havilah, Cal	Sierra (S) National Forest, Cal.	None.	Meeting of supervisors and rangers to discuss national forest business.
Do	Wm. W. Baker	do	do	do	Bakersfield, Cal	do	None.	Do.
Do	Wm. J. Brown	Assistant forest ranger.	do	do	Hot Springs, Cal	do	None.	Do.
Do	W. C. Burton	Forest ranger	do	do	do	do	None.	Do.
Do	Thomas J. Collins	Clerk	do	do	do	do	None.	Do.
Do	Clarence W. Frye	Forest ranger	do	do	St. Tulare, Cal	do	None.	Do.
Do	W. B. Greely	Forest supervisor	do	do	Hot Springs, Cal	do	None.	Do.
Do	Frank P. Hilton	Deputy forest ranger.	do	do	do	do	None.	Do.
Do	Fred A. Humphreys	Forest guard	do	do	do	do	None.	Do.
Do	Oswald H. Klein	Deputy forest ranger	do	do	Isabella, Cal	do	None.	Do.
Do	Wm. M. Maule	Forest assistant	do	do	Hot Springs, Cal	do	None.	Do.

Do.	James O. Morrow	Forest guard	do	do	Glennville, Cal.	do	None.	Do.
Do.	Albert E. Redstone	Assistant forest ranger.	do	do	Badger, Cal.	do	None.	Do.
Do.	Oscar Southerland	Forest guard	do	do	Hot Springs, Cal	do	None.	Do.
Do.	James F. Swank	do	do	do	do	do	None.	Do.
May 24-June 7.	G. L. Clothier	Collaborator	Unofficial	Biltmore, N. C.	Agricultural College, Miss.	Agricultural College, Miss.	48.25	Series of addresses delivered at the request of the Biltmore Forest School.
May 27	Gifford Pinchot	Forester	do	Lansing, Mich.	Lansing, Mich.	Washington, D. C.	None.	Address before State Agricultural College.
May 27-28	George H. Alen	Deputy forest ranger.	Official	San Bernardino, Cal.	Ioamosa, Cal.	San Gabriel National Forest, Cal.	1.00	Meeting of rangers and supervisors to discuss national forest business.
Do.	John H. B. Allen	do	do	do	Mentone, Cal.	San Bernardino National Forest, Cal.	None.	Do.
Do.	Lewis H. Anderson	Assistant forest ranger.	do	do	Monrovia, Cal.	do	None.	Do.
Do.	Leslie O. Bannister	do	do	do	Upland, Cal.	San Gabriel National Forest, Cal.	None.	Do.
Do.	Claud Bidgood	do	do	do	San Bernardino, Cal.	San Bernardino National Forest, Cal.	None.	Do.
Do.	A. C. Brown	Forest guard	do	do	Rialto, Cal.	San Gabriel National Forest, Cal.	None.	Do.
Do.	R. H. Charlton	Forest supervisor	do	do	Los Angeles, Cal.	San Bernardino National Forest, Cal.	8.05	Do.
Do.	Samuel B. Clifton	Deputy forest ranger.	do	do	Lordsburg, Cal.	San Gabriel National Forest, Cal.	None.	Do.
Do.	B. H. Crow	do	do	do	Sierra Madre, Cal.	do	2.75	Do.
Do.	George Crow	do	do	do	Los Angeles, Cal.	do	2.60	Do.
Do.	A. L. Dahl	Clerk	do	do	do	San Bernardino National Forest, Cal.	5.20	Do.
Do.	Charles H. Fick	Deputy forest ranger.	do	do	Beaumont, Cal.	do	None.	Do.
Do.	John E. Graham	do	do	do	Sunland, Cal.	San Gabriel National Forest, Cal.	3.15	Do.
Do.	John Grand	Forest guard	do	do	Acton, Cal.	do	2.40	Do.
Do.	H. Griffith	do	do	do	Fernando, Cal.	San Bernardino National Forest, Cal.	2.75	Do.
Do.	Charles P. Hardy	Deputy forest ranger.	do	do	Azusa, Cal.	San Gabriel National Forest, Cal.	1.10	Do.
Do.	Robert H. Hiett	do	do	do	do	do	2.00	Do.
Do.	Joseph P. Johnson	Assistant forest ranger.	do	do	Cajon, Cal.	San Bernardino National Forest, Cal.	None.	Do.
Do.	A. C. Keller	do	do	do	San Bernardino, Cal.	do	None.	Do.
Do.	Ernest B. Long	Deputy forest ranger.	do	do	Mentone, Cal.	do	None.	Do.
Do.	R. S. Meservey	Forest guard	do	do	San Bernardino, Cal.	do	2.00	Do.
Do.	Arthur R. Meyer	Assistant forest ranger.	do	do	do	do	None.	Do.
Do.	Maurice L. Pease	do	do	do	Hesperia, Cal.	do	2.90	Do.
Do.	James B. Reed	Deputy forest ranger.	do	do	Pasadena, Cal.	San Gabriel National Forest, Cal.	2.60	Do.
Do.	James V. Seaman	do	do	do	Azusa, Cal.	do	None.	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. May 27-28	J. M. Sevier	Forest guard	Official	San Bernardino, Cal.	Monrovia	San Bernardino National Forest, Cal.	$2.40	Meetings of rangers and supervisors to discuss national forest business.
Do	Thomas W. Sloan	Assistant forest ranger.	do	do	Glendora, Cal.	San Gabriel National Forest, Cal.	None.	Do.
Do	J. G. Stanchfield	do	do	do	Los Angeles, Cal.	do	None.	Do.
Do	Bert Switzer	Deputy forest ranger	do	do	Fredalba, Cal.	San Bernardino National Forest, Cal.	None.	Do.
Do	H. E. White	Forest guard	do	do	La Canada, Cal.	San Gabriel National Forest, Cal.	3.00	Do.
May 28	R. S. Kellogg	Chief, Office of Wood Utilization.	Unofficial	Norfolk, Va	Washington, D. C.	Washington, D. C.	24.90	Address before National Lumber Manufacturers' Association.
May 29	F. A. Fenn	Forest supervisor	do	Spokane, Wash	Kooskia, Idaho	Kooskia, Idaho	16.35	Address before Washington State Federation of Women's Clubs.
June 1	William T. Cox	Assistant forester	do	Grants Pass, Oreg	Grants Pass, Oreg	Washington, D. C.	3.00	Address before Grants Pass Board of Trade.
Do	R. H. Rutledge	Forest supervisor	do	Spokane, Wash	Wallace, Idaho	Wallace, Idaho	8.20	In attendance at meeting of Fire Protection Association.
June 6	Enos A. Mills	Forest agent	do	Norfolk, Va	Washington, D. C.	Washington, D. C.	25.00	Address before General Federation of Women's Clubs at Jamestown Exposition.
June 7	F. E. Olmsted	Chief inspector	do	Petaluma, Cal	Petaluma, Cal	San Francisco, Cal.	2.50	In attendance at meeting of California Promotion Committee.
June 8	Enos A. Mills	Forest agent	do	Norfolk, Va	Norfolk, Va	Washington, D. C.	25.00	Address before State Federation of Women's Clubs at Jamestown Exposition.
June 9	do	do	do	do	do	do	15.95	Address before guests of the Innside Inn at the request of the hotel manager.
June 11	W. L. Hall	Assistant forester	do	Hadley, Mass	Washington, D. C.	do	9.95	Address before the Connecticut Valley Congregational Club.
June 12	Herbert A. Smith	Editor	do	Bedford Station, N. Y.	Lake Waccabuc, N. Y.	do	2.00	Address before Bedford Farmers' Club.
June 13	W. L. Hall	Assistant forester	do	Pittsburg, Pa	Washington, D. C.	do	20.15	Address before the Pittsburg Chamber of Commerce.
Do	Enos A. Mills	Forest agent	do	Shelbyville, Ky	do	do	11.05	Address before the Shelbyville Woman's Club.
June 13, 14	C. A. Scott	Forest supervisor	do	Alliance, Nebr	Halsey, Nebr	Halsey, Nebr	8.89	In attendance at stockmen's meeting.

Do	H. R. Shockley	Forest guard	do	do	do	do	7.50	Do.
June 14	Enos A. Mills	Forest agent	do	Shelbyville, Ky	Shelbyville, Ky	Washington, D. C.	14.00	Address before the Kentucky State Federation of Women's Clubs.
June 16-20	H. W. Brannan	Assistant forest ranger.	Official	Weaverville, Cal	Big Bar, Cal	Trinity National Forest, Cal.	8.00	Meeting of supervisors and rangers to discuss national forest business.
Do	Coert Du Bois	Inspector	do	do	San Francisco, Cal	San Francisco, Cal	31.65	Do.
Do	B. R. Garrett	Assistant forest ranger.	do	do	Hyampom, Cal	Trinity National Forest, Cal.	10.00	Do.
Do	Wm. R. Garrett	Deputy forest ranger	do	do	do	do	10.00	Do.
Do	John T. Gray	Assistant forest ranges.	do	do	Armada, Cal	do	10.00	Do.
Do	F. H. Hafley	Forest supervisor	do	do	Weaverville, Cal	do	None.	Do.
Do	W. A. Huestis	Deputy forest ranger.	do	do	do	do	25.54	Do.
Do	James W. Patton	Assistant forest ranger.	do	do	Peanut, Cal	do	8.00	Do.
June 19	S. B. Detwiler	Chief, section of cooperation.	Unofficial	Salem, Ind	Washington, D. C.	Washington, D. C.	2.69	Address before Salem Farmers' Club.
June 20	M. J. Anderson	Forest supervisor	do	Rogue River, Oreg.	Rogue River, Oreg.	Grants Pass, Oreg.	None.	In attendance at meeting of Josephine County Fruit Association.
Do	Enos A. Mills	Forest agent	do	Helena, Mont	Deer Lodge, Mont.	Washington, D. C.	15.45	Address before Montana State Federation of Women's Clubs.
Do	do	do	do	do	Helena, Mont	do	10.00	Address before the pupils of the public schools.
June 21	H. D. Tiemann	Engineer of timber tests.	do	Atlantic City, N. J.	New Haven, Conn.	New Haven, Conn.	27.65	Address before American Society of Testing Materials.
Do	Enos A. Mills	Forest agent	do	Helena, Mont	Helena, Mont	Washington, D. C.	10.00	Address before Helena Women's Club.
June 22	A. F. Potter	Assistant forester	do	Pocatello, Idaho	Pocatello, Idaho	do	2.50	In attendance at meeting of Commercial Club.
Do	F. A. Fenn	Forest supervisor	do	do	do	Boise, Idaho	2.50	Do.
Do	Gifford Pinchot	Forester	do	do	do	Washington, D. C.	None.	Address before board of trade.
June 16-20,	G. W. Peavy	Inspector	Official	Weaverville, Cal	San Francisco, Cal.	San Francisco, Cal.	34.98	Meeting of supervisors and rangers to discuss national forest business.
June 18	Enos A. Mills	Forest agent	Unofficial	Deer Lodge, Mont.	Shelbyville, Ind	Washington, D. C.	71.93	Address before Deer Lodge Womans' Club.
June 18, 19, and 20.	E. T. Allen	Chief inspector	Official	Denver, Colo	Portland, Oreg	Portland, Oreg	123.30	Meeting of supervisors and inspectors to discuss national forest business.
Do	David Anderson	Forest supervisor	do	do	Collbran, Colo	Collbran, Colo	33.40	In attendance at meeting of inspectors and supervisors by direction of the Forester.
Do	R. E. Benedict	Chief inspector	do	do	Salt Lake, Utah	Salt Lake, Utah	64.50	Meeting of supervisors and inspectors to discuss national forest business.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. June 18, 19 and 20.	James A. Blair	Forest supervisor	Official	Denver, Colo	Meeker, Colo	Meeker, Colo	$40.40	In attendance at meeting of supervisors and inspectors by direction of the Forester.
Do	F. S. Breen	do	do	do	Flagstaff, Ariz	Flagstaff, Ariz	89.00	Do.
Do	D. D. Bronson	Chief inspector	do	do	Albuquerque, N. Mex.	Albuquerque, N. Mex.	48.00	Meeting of inspectors and supervisors to discuss national forest business.
Do	F. A. Fenn	Forest supervisor	do	do	Boise, Idaho	Boise, Idaho	89.80	Do.
Do	H. H. French	do	do	do	Glenwood Springs, Colo.	Glenwood Springs, Colo.	31.60	Meeting of supervisors to discuss national forest business
Do	R. C. McClure	do	do	do	Silver City, N. Mex.	Silver City, N. Mex.	66.85	Do.
Do	R. E. Miller	do	do	do	Jackson, Wyo	Jackson, Wyo	89.95	Meeting of supervisors and inspectors to discuss national forest business.
Do	W. I. Pack	do	do	do	Provo, Utah	Provo, Utah	63.40	In attendance at meeting of inspectors and supervisors by direction of the Forester.
Do	Gifford Pinchot	Forester	Unofficial	do	Washington, D. C.	Washington, D. C.	30.45	In attendance at public lands convention by invitation from the governor of Colorado.
Do	A. F. Potter	Assistant forester	do	do	Leadville, Colo	do	27.00	Do.
Do	Smith Riley	Chief inspector	Official	do	Denver, Colo	Denver, Colo	None.	Inspectors' and supervisors' meeting.
Do	R. W. Shellabarger	Forest supervisor	do	do	Saguache, Colo	Saguache, Colo	52.60	In attendance at meeting of inspectors and supervisors by direction of the Forester.
Do	E. A. Sherman	Chief inspector	do	do	Missoula, Mont	Missoula, Mont	70.00	Meeting of inspectors and supervisors to discuss national forest business.
Do	Phillip P. Wells	Law officer	do	do	Washington, D. C.	Washington, D. C.	149.30	Do.
Do	Mark G. Woodruff	Forest supervisor	do	do	Denver, Colo	Denver, Colo	None.	Do.
June 22	C. E. Rachford	do	Unofficial	Canby, Cal	Alturas, Cal	Alturas, Cal	None.	In attendance at meeting of West Modoc Live Stock Association.
June 24	John Gray	Forest ranger	do	Dobson, Cal	Weaversville, Cal	Weaversville, Cal	2.25	In attendance at meeting of stockmen.
Do	F. H. Hafley	Forest supervisor	do	do	do	do	4.00	Do.
Do	J. W. Patton	Forest ranger	do	do	do	do	2.25	Do.
Do	John S. Reid	do	do	do	do	do	2.50	Do.
Do	Enos A. Mills	Forest agent	Official	Helena, Mont	Helena, Mont	Washington, D. C.	10.00	Address before supervisor's meeting, Forest Service.

June 24-28	A. C. Shaw	Principal examiner	do	do	Denver, Colo	do	50.95	In attendance at supervisors' meeting by direction of the Forester.
June 24-29	C. H. Adams	Inspector of grazing	do	do	Missoula, Mont	do	35.00	In attendance at meeting of supervisors to discuss national forest business.
Do	James B. Adams	Assistant forester	do	do	Helena, Mont	do	21.00	Do.
Do	J. E. Barton	Forest assistant	do	do	St. Anthony, Idaho	Henrys Lake National Forest.	50.00	Do.
Do	George G. Bentz	Acting forest supervisor.	do	do	Salmon City, Idaho	Lemhi National Forest.	48.53	Do.
Do	Dwight Bushnell	Forest supervisor	do	do	Helena, Mont	Helena National Forest.	None.	Do.
Do	George H. Cecil	Inspector	do	do	Miles City, Mont	Miles City, Mont	35.00	Do.
Do	David Conkling	Forest supervisor	do	do	Bozeman, Mont	Gallatin National Forest.	30.10	Do.
Do	William T. Cox	Assistant forester	do	do	Helena, Mont	Washington, D. C.	21.00	Do.
Do	Homer E. Fenn	do	do	do	St. Anthony, Idaho	Henrys Lake National Forest.	67.50	Do.
Do	F. N. Haines	do	do	do	Kalispell, Mont	Lewis and Clark (N) National Forest.	45.00	Do.
Do	Charles C. Hall	do	do	do	Anaconda, Mont	Hell Gate (E) and Big Hole (Anaconda Div.) national forests.	25.05	Do.
June 30	Charles H. Hinderer	Forest ranger	do	Cloudcroft, N. Mex.	Alamogordo, N. Mex	Sacramento National Forest, N. Mex.	5.55	Rangers meeting.
June 24-29	E. R. Hodson	Forest assistant	do	Helena, Mont	Helena, Mont	Washington, D. C.	None.	In attendance at meeting of supervisors to discuss national forest business.
Do	W. E. Jackson	Forest supervisor	do	do	Big Horn, Wyo	Big Horn National Forest.	28.95	Do.
Do	D. G. Kinney	do	do	do	Libby, Mont	Kootenai and Cabinet national forests.	52.00	Do.
Do	Elers Koch	do	do	do	Missoula, Mont	Missoula National Forest.	28.40	Do.
Do	Arthur C. McCain	Forest ranger	do	do	Kalispell, Mont	Lewis and Clark (S) National Forest.	15.00	Do.
Do	B. F. McConnell	Forest supervisor	do	do	Priest River, Idaho	Priest River National Forest.	40.95	Do.
Do	Guy B. Mains	do	do	do	Mackay, Idaho	Lemhi National Forest.	51.30	Do.
Do	Robert E. Miller	do	do	do	Jackson, Wyo	Yellowstone (Teton Div.) National Forest.	86.15	Do.
Do	J. W. Nelson	do	do	do	Saratoga, Wyo	Medicine Bow, Crow Creek, and Sierra Madre national forests.	83.75	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. June 24-29.	A. E. Oman	Forest assistant	Official	Helena, Mont.	Helena, Mont.	Washington, D. C.	None.	In attendance at meeting of supervisors to discuss national forest business.
June 25, 26.	A. F. Potter	Assistant forester	do	do	Denver, Colo.	do	$48.60	Do.
June 24, 29.	R. W. Pullman	Expert	do	do	Washington, D. C.	do	21.00	Do.
Do.	P. G. Redington	Inspector	do	do	Missoula, Mont.	Missoula, Mont.	35.00	Do.
Do.	F. W. Reed	do	do	do	Salt Lake City, Utah	Salt Lake City, Utah	35.00	Do.
Do.	E. C. Russell	Forest supervisor	do	do	Livingston, Mont.	Crazy Mountains National Forest.	56.32	Do
Do.	Richard H. Rutledge.	Acting forest supervisor.	do	do	Wallace, Idaho	Coeur d'Alene National Forest.	34.55	Do.
Do.	Elmore Searcy	Forest ranger	do	do	Helena, Mont.	Helena National Forest.	None.	Do.
Do.	J. B. Seely	Forest supervisor	do	do	Sheridan, Mont.	Madison and Big Hole (S) national forests.	37.90	Do.
Do.	A. C. Shaw	Principal examiner	do	do	Denver, Colo.	Washington, D. C.	39.70	Do.
Do.	E. A. Sherman	Chief inspector	do	do	Missoula, Mont.	Missoula, Mont.	35.00	Do.
Do.	F. A. Silcox	Inspector	do	do	Thompson's Falls, Mont.	Thompsons Falls, Mont.	35.00	Do.
Do.	S. N. Spring	Chief, Office of Extension.	do	do	Washington, D. C.	Washington, D. C.	21.00	Do.
Do.	R. W. Stuart	Forest supervisor	do	do	Townsend, Mont.	Big Belt National Forest.	25.00	Do.
Do.	R. Y. Stuart	Forest assistant	do	do	Helena, Mont.	Washington, D. C.	None.	Do.
Do.	James G. Thain	Forest supervisor	do	do	Highwood, Mont.	Highwood Mountains National Forest.	28.70	Do.
Do.	H. W. Thurston	Acting forest supervisor.	do	do	Cody, Wyo.	Yellowstone and Pryor Mountains national forests.	50.00	Do.
Do.	Ira E. Todd	Forest supervisor	do	do	Neihart, Mont.	Snowy Mountains and Little Belt national forests.	32.50	Do.
Do.	P. T. Wrensted	do	do	do	Pocatello, Idaho	Pocatello National Forest.	41.00	Do.
Do.	J. T. Wedemeyer	Acting forest supervisor.	do	do	Idaho Falls, Idaho	Caribou National Forest.	36.70	Do.
Do.	C. K. Wyman	Forest supervisor	do	do	Dillon, Mont.	Elkhorn and Big Hole (N) national forests.	25.00	Do.
June 25.	F. A. Fenn	do	Unofficial	Boise, Idaho	Pocatello, Idaho	Boise, Idaho	23.85	In attendance at meeting of Commercial Club.

Do.	Gifford Pinchot	Forester	do	do	Boise, Idaho	Washington, D. C.	None.	Address before Commercial Club.
Do.	Enos A. Mills	Forest agent	do	Sheridan, Wyo	Helena, Mont	do	26.35	Address before the board of education.
June 26	S. B. Detwiler	Chief, section of cooperation.	do	Manhattan, Kans	Indianapolis, Ind	do	45.97	Address before Kansas State Agricultural College.
Do.	F. A. Fenn	Forest supervisor	do	Weiser, Idaho	Weiser, Idaho	Boise, Idaho	2.50	In attendance at meeting of Commercial Club.
June 27	Gifford Pinchot	Forester	do	do	do	Washington, D. C.	None.	Address before commercial organization.
June 28	Enos A. Mills	Forest agent	do	Golden, Colo	Helena, Mont	do	34.00	Address before the State Industrial College.
June 29	Gifford Pinchot	Forester	do	Coeur d'Alene, Idaho.	Coeur d'Alene, Idaho.	do	1.20	Address before mayor and citizens.
Do.	F. A. Fenn	Forest supervisor	do	do	Boise, Idaho	Boise, Idaho	69.90	In attendance at meeting of Commercial Club.
July 1	R. H. Charlton	do	do	Santa Ana, Cal	Los Angeles, Cal	Los Angeles, Cal	1.50	In attendance at meeting of Tri-Counties Reforestation Committee.
July 1-2	James Blackhall	Forest ranger	do	Saratoga, Wyo	Riverside, Wyo	Sierra Madre National Forest, Wyo.	3.33	Meeting of supervisors and rangers to discuss national forest business.
Do.	Ben F. Goe	Assistant forest ranger.	do	do	Medicine Bow National Forest, Wyo.	Medicine Bow National Forest, Wyo.	2.33	Do.
Do.	Penn L. Gooldy	do	do	do	Slater, Colo	Sierra Madre National Forest, Wyo.	3.00	Do.
Do.	John E. Keach	do	do	do	Saratoga, Wyo	Medicine Bow National Forest, Wyo.	None.	Do.
Do.	George E. Mullison	Deputy forest ranger.	do	do	Copperton, Wyo	Sierra Madre National Forest, Wyo.	1.67	Do.
Do.	John H. Mullison	Forest ranger	do	do	Keystone, Wyo	Medicine Bow National Forest, Wyo.	2.67	Do.
Do.	J. W. Nelson	Forest supervisor	do	do	Saratoga, Wyo	Sierra Madre, Medicine Bow, Crow Creek national forests, Wyo.	None.	Do.
Do.	Frank W. Pennock	Assistant forest ranger.	do	do	Crow Creek National Forest, Wyo.	Crow Creek National Forest, Wyo.	2.67	Do.
Do.	John Reid	Deputy forest ranger.	do	do	Laramie, Wyo	Medicine Bow National Forest, Wyo.	3.00	Do.
Do.	Clinton G. Smith	Assistant forest ranger.	do	do	Saratoga, Wyo	do	None.	Do.
Do.	Albert B. Walker	do	do	do	do	Sierra Madre National Forest, Wyo.	None.	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
July 3	William L. Hall	Assistant forester	Unofficial	Mount Washington, N. H.	Mount Washington, N. H.	Washington, D. C.	None.	Address before Appalachian Mountain Club.
July 6	Gifford Pinchot	Forester	do	Wallace, Idaho	Wallace, Idaho	do	None.	Address before commercial organization, mayor, and citizens.
July 7	do	do	do	Spokane, Wash	Spokane, Wash	do	None.	Address before mayor and business men.
July 8	do	do	do	Moscow, Idaho	do	do	$2.85	Public address under the auspices of Representative French.
July 12-15	do	do	Official	Portland, Oreg	Portland, Oreg	do	None.	Meeting of Forester and supervisors to discuss national forest business.
Do	J. M. Schmitz	Forest supervisor	do	do	Walla Walla, Wash.	Wenaha National Forest, Wash.	18.50	Do.
Do	Clyde R. Seitz	do	do	do	Eugene, Oreg	Tillamook and Umpqua national forests, Oreg.	20.55	Do.
July 13	Gifford Pinchot	Forester	Unofficial	do	Portland, Oreg	Washington, D. C.	None.	Address before commercial club.
July 15-16	George L. Clothier	Collaborator	do	Heueks, Miss	Agricultural College, Miss.	Agricultural College, Miss.	11.05	Address before farmers' institute.
July 17	do	do	do	Wesson, Miss	Heueks, Miss	do	5.00	Do.
Do	H. A. Winkenwerder	Forest assistant	do	Louisville, Ky	Washington, D. C.	Washington, D. C.	46.50	Address before meeting Tight Barrel Stave Manufacturers Association.
July 19	Gifford Pinchot	Forester	do	Grants Pass, Oreg	Grants Pass, Oreg.	do	None.	Address before commercial club.
Do	George L. Clothier	Collaborator	do	Barlow, Miss	Wesson, Miss	Agricultural College, Miss.	2.10	Address before farmers' institute.
July 19-20	William F. Sherfesee.	Chief, Office of Wood Preservation.	do	Knoxville, Tenn	Washington, D. C.	Washington, D. C.	54.50	Lectures before Summer School of the South.
July 20	George L. Clothier	Collaborator	do	Hazelhurst, Miss	Barlow, Miss	Agricultural College, Miss.	7.25	Address before farmers' institute.
July 20-22	F. G. Blake	Forest guard	Official	Santa Fe, N. Mex	Gallina, N. Mex	Jemez-Taos national forests.	10.00	Meeting to discuss Forest Service business.
Do	Winfred B. Bletcher	do	do	do	Senorito, N. Mex	do	16.00	Do.
Do	Jno. Booth	Forest supervisor	do	do	Ortiz, Colo	do	26.60	Do.
Do	D. D. Bronson	Chief inspector	do	do	Albuquerque, N. Mex	Albuquerque, N. Mex	7.20	Meeting of supervisors and rangers to discuss national forest business.
Do	J. M. C. Chavez, jr	Assistant forest ranger.	do	do	Vallecitos, N. Mex	Jemez National Forest.	25.95	Meeting to discuss Forest Service business.

Do.	Jno. W. Dorman	Forest supervisor	do	do	Thornton, N. Mex.	Jemez-Taos national forests.	7.50	Do.
Do.	Carroll R. Dwire	do	do	do	Sante Fe, N. Mex.	do	13.90	Do.
Do.	Harry C. Hall	do	do	do	Thornton, N. Mex.	do	14.00	Do.
Do.	T. C. Heighe, jr	Forest guard	do	do	Gallina, N. Mex.	Jemez National Forest.	10.05	Do.
Do.	James P. Leese	do	do	do	Espanola, N. Mex.	Jemez-Taos national forests.	12.75	Do.
Do.	Nelson Legrand	Forest agent	do	do	Guam, N. Mex.	Jemez National Forest.	12.50	Do.
Do.	Ross McMillin	Forest supervisor	do	do	Santa Fe, N. Mex.	Jemez-Taos national forests.	None.	Do.
Do.	L. S. Myers	Assistant forest ranger.	do	do	Questa, N. Mex.	Taos National Forest.	23.25	Do.
Do.	Serope Y. Parnay	Forest expert	do	do	East Las Vegas, N. Mex.	Pecos National Forest.	18.45	Do.
Do.	Bert Phillips	Assistant forest ranger.	do	do	Taos, N. Mex.	Taos National Forest.	21.75	Do.
Do.	Arthur D. Read	Forest assistant	do	do	Santa Fe, N. Mex.	Jemez-Taos national forests.	None.	Do.
Do.	Thos. N. Reynolds	Assistant forest ranger.	do	do	Cordova	Pecos-Taos national forests.	11.50	Do.
Do.	L. A. Shartzer	do	do	Santa Fe, N. Mex.	Canjilon, N. Mex.	Jemez-Taos national forests.	18.50	Do.
Do.	Thos. R. Stewart	Deputy forest ranger.	do	do	Santa Fe, N. Mex.	Pecos-Taos national forests.	12.20	Do.
Do.	B. M. Thomas	Clerk	do	do	do	Jemez-Taos national forests.	None.	Do.
Do.	Louis E. Thompson.	Assistant forest ranger.	do	do	Thornton, N. Mex.	do	7.50	Do.
Do.	H. C. Viles	Forest guard	do	do	Cowles, N. Mex.	Pecos National Forest.	12.20	Do.
Do.	A. O. Waha	Inspector	do	do	Albuquerque, N. Mex.	Albuquerque, N. Mex.	6.00	Meeting of supervisors and rangers to discuss national forest business.
July 21	Gifford Pinchot	Forester	Unofficial	Willow, Cal.	Willow, Cal.	Washington, D. C.	None.	Banquet to Secretary of Interior.
July 22	George L. Clothier	Collaborator	do	Smithdale, Miss.	Hazelhurst, Miss.	Agricultural College, Miss.	6.50	Address before farmers' institute.
July 23	do	do	do	Trent, Miss.	Smithdale, Miss.	do	9.00	Do.
Do.	McGarvey Cline	Assistant chief, Office of Wood Utilization.	do	Chicago, Ill.	Washington, D. C.	Washington, D. C.	6.15	Address before Yellow Pine Manufacturers Association.
July 23-25	Nels Amble	Forest guard	Official	Missoula, Mont.	Quartz, Mont.	Lolo National Forest, Mont.	8.80	Meeting of rangers and supervisors to discuss national forest business.
Do.	G. A. Baker	Assistant forest ranger.	do	do	Missoula, Mont.	do	7.55	Do.
Do.	Elmer J. Breen	do	do	do	Stark, Mont.	do	3.50	Do.
Do.	Edson T. Buker	do	do	do	Stevensville, Mont.	Bitter Root National Forest, Mont.	5.45	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. July 23-25	H. M. Butler	Assistant forest ranger.	Official	Missoula, Mont	Darby, Mont	Bitter Root National Forest, Mont.	$5.15	Meeting of rangers and supervisors to discuss national forest business.
Do	Eli Edwards	Forest guard	do	do	Missoula, Mont	Missoula National Forest, Mont.	1.25	Do.
Do	James Gallogby	Assistant forest ranger.	do	do	Sula, Mont	Bitter Root National Forest, Mont.	2.60	Do.
Do	Frank D. Haun	do	do	do	Missoula, Mont	Lolo National Forest, Mont.	2.75	Do.
Do	R. P. McLaughlin	Forest guard	do	do	Darby, Mont	Bitter Root National Forest, Mont.	3.50	Do.
Do	William See	Assistant forest ranger.	do	do	Grantsdale, Mont	do	7.90	Do.
Do	Earl B. Tanner	do	do	do	Darby, Mont	do	11.35	Do.
Do	T. P. Thompson	Forest guard	do	do	Saltese, Mont	Missoula National Forest, Mont.	3.20	Do.
Do	Jas. D. Vance	Assistant forest ranger.	do	do	Darby, Mont	Bitter Root National Forest, Mont.	6.15	Do.
Do	Chas. E. Watson	Forest guard	do	do	Lolo Springs, Mont	do	2.60	Do.
Do	Nathl. E. Wilkerson	Forest ranger	do	do	Darby, Mont	do	7.20	Do.
July 25	Gifford Pinchot	Forester	Unofficial	Red Bluff, Cal	Red Bluff, Cal	Washington, D. C.	None.	Address before citizens.
July 26	George L. Clothier	Collaborator	do	Lake, Miss	Trent, Miss	Agricultural College, Miss.	7.04	Address before farmers institute.
Do	do	do	do	Simmonsville, Miss.	Lake, Miss	do	7.08	Do.
Do	W. H. von Bayer	Chief, section of reconnaissance, Office of Extension.	do	Billings, Mont	Billings, Mont	Washington, D. C.	None.	Address before woman's club.
Do	H. A. Winkenwerder	Forest assistant	do	Johnson, Vt	Washington, D. C.	do	41.25	Address before Summer School, State Normal School.
July 27	C. I. Hill	do	do	Maplesville, Ala	Maplesville, Ala	do	None.	Address before Alabama State Cotton Growers Association.
July 28	Gifford Pinchot	Forester	do	Colusa, Cal	Colusa, Cal	do	None.	Address before board of trade.
July 29	George L. Clothier	Collaborator	do	Tylertown, Miss	Simmonsville, Miss.	Agricultural College, Miss.	20.85	Address before farmers institute.
Aug. 3	W. L. Hall	Assistant forester	do	Washington Grove, Md.	Washington, D. C.	Washington, D. C.	None.	Address before Washington Grove Chautauqua.
Aug. 5	Fred G. Plummer	Geographer	do	Elizabeth City, N. C.	do	do	15.85	Educational tour of the Hon. J. H. Small.

Do	George L. Clothier	Collaborator	do	Toomsuba, Miss	Tylertown, Miss	Agricultural College, Miss.	6.20	Address before farmers institute.
Aug. 6	do	do	do	Enterprise, Miss	Toomsuba, Miss	do	.95	Farmers' institute.
Do	Fred G. Plummer	Geographer	do	Hartford, N. C	Elizabeth City, N. C.	Washington, D. C.	1.16	Educational tour of the Hon. J. H. Small.
Do	do	do	do	Edenton, N. C	Hertford, N. C	do	2.15	Do.
Aug. 7	do	do	do	Plymouth, N. C	Edenton, N. C	do	1.10	Do.
Do	do	do	do	Washington, N. C.	Plymouth, N. C	do	3.10	Do.
Do	C. L. Hill	Forest assistant	do	Auburn, Ala	Auburn, Ala	do	None.	Address at summer school, Alabama Polytechnic Institute.
Do	George L. Clothier	Collaborator	do	Vosberg, Miss	Enterprise, Miss.	Agricultural College, Miss.	5.10	Address at Farmers' institute.
Aug. 8	Quincy R. Craft	Editorial clerk	do	Mankato, Kans	Washington, D. C.	Washington, D. C.	7.00	Address before Mankato Normal School.
Do	George L. Clothier	Collaborator	do	Heidelberg, Miss	Vosberg, Miss	Agricultural College, Miss.	1.10	Farmers' institute.
Do	Fred G. Plummer	Geographer	do	Washington, N. C.	Washington, N. C.	Washington, D. C.	None.	Educational tour of the Hon. J. H. Small.
Do	M. J. Anderson	Forest supervisor	do	Medford, Oreg	Medford, Oreg	Grants Pass, Oreg.	None.	In attendance at meeting of Oregon Horticultural Society.
Aug. 9	Quincy R. Craft	Editorial clerk	do	Smith Center, Kans.	Mankato, Kans	Washington, D. C.	7.00	Address before normal institute.
Do	Fred G. Plummer	Geographer	do	Greenville, N. C	Washington, N. C.	do	3.80	Educational tour of the Hon. J. H. Small.
Do	George L. Clothier	Collaborator	do	Erata, Miss	Heidelberg, Miss	Agricultural College, Miss.	6.60	Farmers' institute.
Aug. 9, 10	Homer E. Fenn	Forest supervisor	do	Yellowstone Park, Wyo.	St. Anthony, Idaho.	St. Anthony, Idaho.	38.25	In attendance at meeting of the game commissioners.
Do	E. C. Russell	do	do	Mammoth Hot Springs, Wyo.	Livingston, Mont	Livingston, Mont	8.20	In attendance convention of National Association of Game Wardens.
Do	E. A. Sherman	Chief inspector	do	do	Missoula, Mont	Missoula, Mont	25.00	Do.
Aug. 10	George L. Clothier	Collaborator	do	Dont, Miss	Erata, Miss	Agricultural College, Miss.	5.60	Farmers' institute.
Do	Fred G. Plummer	Geographer	do	Williamston, N. C.	Greenville, N. C	Washington, D. C.	8.84	Educational tour of the Hon. J. H. Small.
Aug. 12	George L. Clothier	Collaborator	do	Summerland, Miss.	Dont, Miss	Agricultural College, Miss.	4.90	Farmers' institute.
Do	Fred G. Plummer	Geographer	do	Gatesville, N. C	Williamston, N. C.	Washington, D. C.	8.85	Educational tour of the Hon. J. H. Small.
Aug. 13	Quincy R. Craft	Editorial clerk	do	Lincoln, Kans	Smith Center, Kans.	do	7.00	Address before normal school.
Do	Thomas E. Will	Collaborator	do	Greenacre, Me	Washington, D. C.	do	None.	Address before Greenacre Summer Conference.
Do	George L. Clothier	do	do	Bay Springs, Miss.	Summerland, Miss.	Agricultural College, Miss.	3.50	Farmers' institute.
Do	Fred G. Plummer	Geographer	do	Winton, N. C	Gatesville, N. C	Washington, D. C.	6.25	Educational tour of the Hon. J. H. Small.
Aug. 14	Quincy R. Craft	Editorial clerk	do	Ellsworth, Kans	Lincoln, Kans	do	7.00	Address before normal institute.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Aug. 14	George L. Clothier	Collaborator	Unofficial	Sylvarena, Miss	Bay Springs, Miss	Agricultural College, Miss.	$2.50	Farmers' institute.
Aug. 15	Quincy R. Craft	Editorial clerk	do	Russell, Kans	Ellsworth, Kans	Washington, D. C.	7.00	Address before normal school.
Do	George L. Clothier	Collaborator	do	Raleigh, Miss	Sylvarena, Miss	Agricultural College, Miss.	1.50	Farmers' institute.
Aug. 16	Quincy R. Craft	Editorial clerk	do	Hays, Kans	Russell, Kans	Washington, D. C.	7.00	Address before normal school.
Do	George L. Clothier	Collaborator	do	Burns, Miss	Raleigh, Miss	Agricultural College, Miss.	1.00	Address at farmers' institute.
Aug. 17	do	do	do	Montrose, Miss	Burns, Miss	do	15.50	Do.
Aug. 19	Frank A. Blair	Acting forest supervisor	do	Ouray, Colo	Delto, Colo	Delta, Colo	11.00	In attendance at meeting of miners.
Do	W. M. Darley	Forest guard	do	do	Ouray, Colo	do	None.	Do.
Do	H. L. Spencer	Forest ranger	do	do	do	do	None.	Do.
Do	I. T. Worthley	Forest assistant	do	do	Delta, Colo	do	15.00	Do.
Do	Quincy R. Craft	Editorial clerk	do	Spring Creek, Kans.	Hays, Kans	Washington, D. C.	7.00	Address before farmers and teachers.
Do	H. A. Winkenwerder	Forest assistant	do	Gallatin, Tenn	Washington, D. C.	do	33.65	Educational tour of the Hon. Cordell Hull.
Do	George L. Clothier	Collaborator	do	Poplarville, Miss	Montrose, Miss	Agricultural College, Miss.	4.40	Address at farmers' institute.
Aug. 20	H. A. Winkenwerder	Forest assistant	do	Lafayette, Tenn	Gallatin, Tenn	Washington, D. C.	2.85	Educational tour of the Hon. Cordell Hull.
Do	Findley Burns	Chief, Office of Publication.	Official	Los Angeles, Cal	Los Angeles, Cal	do	None.	Supervisors' meeting.
Do	Quincy R. Craft	Editorial clerk	Unofficial	Hill City, Kans	Hays, Kans	do	7.00	Address at Graham County Normal Institute.
Do	George L. Clothier	Collaborator	do	McNeil, Miss	Poplarville, Miss	Agricultural College, Miss.	1.60	Address at farmers' institute.
Aug. 21	Quincy R. Craft	Editorial clerk	do	Hill City, Kans	Spring Creek, Kans.	Washington, D. C.	7.00	Address before normal institute.
Do	H. A. Winkenwerder	Forest assistant	do	Carthage, Tenn	Lafayette, Tenn	do	5.30	Educational tour of the Hon. Cordell Hull.
Do	J. S. Holmes	do	do	Newnan, Ga	Washington, D. C.	do	14.88	Address before farmers' union.
Do	George L. Clothier	Collaborator	do	Silver Creek, Miss	McNeil, Miss	Agricultural College, Miss.	3.85	Address at farmers' institute.
Aug. 22	H. A. Winkenwerder	Forest assistant	do	Lebanon, Tenn	Carthage, Tenn	Washington, D. C.	1.63	Educational tour of the Hon. Cordell Hull.
Do	J. S. Holmes	do	do	Carrollton, Ga	Newnan, Ga	do	14.88	Address at annual meeting of Georgia Agricultural Society.
Do	George L. Clothier	Collaborator	do	Monticello, Miss	Silver Creek, Miss	Agricultural College, Miss.	5.80	Address at farmers' institute.

Aug. 23	H. A. Winkenwerder	Forest assistant	do	Cookeville, Tenn	Lebanon, Tenn	Washington, D. C.	4.95	Educational tour of the Hon. Cordell Hull.
Aug. 24	do	do	do	Livingston, Tenn	Cookeville, Tenn	do	2.15	Do.
Do	George L. Clothier	Collaborator	do	Columbia, Miss	Monticello, Miss	Agricultural College, Miss.	.75	Address at farmers' institute.
Aug. 26	H. A. Winkenwerder	Forest assistant	do	Celina, Tenn	Livingston, Tenn	Washington, D. C.	3.75	Educational tour of the Hon. Cordell Hull.
Do	C. L. Hill	do	do	Cullman, Ala	Montgomery, Ala	do	None.	Address before farmers' association.
Do	George L. Clothier	Collaborator	do	Eastabutchie, Miss.	Columbia, Miss	Agricultural College, Miss.	12.90	Address at farmers' institute.
Aug. 26-29	Gifford Pinchot	Forester	Official	Los Angeles, Cal	Los Angeles, Cal	Washington, D. C.	None.	Meeting of Forester and supervisors to discuss national forest business.
Do	S. H. Douglas	Forest ranger	do	do	Santa Barbara, Cal.	Santa Barbara National Forest, Cal.	10.50	Do.
Do	E. S. Mainwaring	Forest supervisor	do	do	San Luis Obispo, Cal.	San Luis Obispo National Forest, Cal.	25.55	Do.
Do	N. O. Torestenson	do	do	do	Salinas, Cal	Monterey and Pinnacles national forests, Cal.	34.00	Do.
Aug. 27	H. A. Winkenwerder	Forest assistant	Unofficial	Gainesboro, Tenn	Celina, Tenn	Washington, D. C.	7.45	Educational tour of the Hon. Cordell Hull.
Do	George L. Clothier	Collaborator	do	Soso, Miss	Eastabutchie, Miss.	Agricultural College, Miss.	5.95	Address at farmers' institute.
Aug. 28	H. A. Winkenwerder	Forest assistant	do	Crossville, Tenn	Gainesboro, Tenn	Washington, D. C.	2.03	Educational tour of the Hon. Cordell Hull.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Kaaterskill, N. Y.	Washington, D. C.	do	32.85	Address before annual meeting of the National Box Manufacturers' Association.
Do	George L. Clothier	Collaborator	do	Battlefield, Miss	Soso, Miss	Agricultural College, Miss.	1.85	Address at farmers' institute.
Aug. 29	H. A. Winkenwerder	Forest assistant	do	Dayton, Tenn	Crossville, Tenn	Washington, D. C.	29.60	Educational tour of the Hon. Cordell Hull.
Do	C. L. Hill	do	do	Arkadelphia, Ala	Logan, Ala	do	.75	Demonstration of open-tank creosoting process on educational tour with State commissioner of agriculture.
Aug. 30	do	do	do	Walter, Ala	Arkadelphia, Ala	do	None.	Address before farmers' institute at request of Alabama State commissioner of agriculture.
Aug. 31	Quincy R. Craft	Editorial clerk	do	Downs, Kans	Hill City, Kans	do	7.00	Address before farmers' institute.
Do	C. L. Hill	Forest assistant	do	Joppa, Ala	Walter, Ala	do	None.	Address before farmers' institute at request of Alabama State commissioner of agriculture.
Do	George L. Clothier	Collaborator	do	Crawford, Miss	Meridian, Miss	Agricultural college, Miss.	2.90	Address before farmers' institute.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Aug. 31	G. S. Arnold	Expert	Unofficial	Rawlins, Wyo	Denver, Colo	Washington, D. C.	$18.85	In attendance at meeting of Carbon County Wool Growers' Association, by direction of the Assistant Forester.
Do	J. W. Nelson	Forest supervisor	do	do	Saratoga, Wyo	Saratoga, Wyo	10.20	Do.
Do	A. F. Potter	Assistant Forester	do	do	Denver, Colo	Washington, D. C.	12.60	In attendance, by invitation, meeting of Carbon County Wool Growers' Association.
Do	Smith Riley	Chief inspector	do	do	do	Denver, Colo	11.90	In attendance by direction of the Assistant Forester.
Sept. 2	Gifford Pinchot	Forester	do	Sacramento, Cal	Los Angeles, Cal	Washington, D. C.	15.15	Address before the National Irrigation Congress.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Iuka, Miss	Washington, D. C.	do	34.45	Educational tour of Hon. E. S. Candler, jr.
Sept. 2-7	M. J. Anderson	Forest supervisor	Official	Sacramento, Cal	Grants Pass, Oreg.	Siskiyou National Forest, Oreg.	39.25	Meeting of supervisors to discuss national forest business.
Do	L. A. Barrett	do	do	do	Quincy, Cal	Diamond Mountain, Plumas, and Lassen Peak national forests, Cal.	25.00	Do.
Do	S. C. Bartrum	do	do	do	Roseburg, Oreg	Cascade National Forest, Oreg.	34.60	Do.
Do	R. L. Bigelow	do	do	do	Sacramento, Cal	Klamath National Forest, Cal.	11.00	Do.
Do	E. E. Carter	Assistant forester	do	do	do	Washington, D. C.	23.00	Do.
Do	G. A. Coleman	Forest supervisor	do	do	Sisson, Cal	Shasta National Forest, Cal.	30.85	Do.
Do	S. L. N. Ellis	do	do	do	Sonora, Colo	Stanislaus National Forest, Cal.	17.55	Do.
Do	F. H. Hafley	do	do	do	Weaverville, Cal	Trinity National Forest, Cal.	22.00	Do.
Do	C. S. Judd	Forest assistant	do	do	Sisson, Cal	Plumas National Forest, Cal.	21.90	Do.
Do	F. E. Olmsted	Chief inspector	do	do	San Francisco, Cal	San Francisco, Cal	21.55	Do.
Do	Gifford Pinchot	Forester	Unofficial	do	Los Angeles, Cal	Washington, D. C.	None.	In attendance at National Irrigation Congress by invitation.
Do	A. F. Potter	Assistant forester	do	do	Sacramento, Cal	do	14.75	In attendance, by invitation, meeting of National Irrigation Congress.
Do	Smith Riley	Chief inspector	Official	do	Denver, Colo	Denver, Colo	86.75	Meeting of supervisors to discuss national forest business.

Do	Thos. H. Sherrard	Assistant forester	do	do	Flagstaff, Cal	Washington, D. C.	44.90	Do.
Do	C. H. Shinn	Forest supervisor	do	do	Northfork, Cal	Sierra National Forest, Cal.	18.35	Do.
Sept. 3	G. L. Clothier	Collaborator	Unofficial	Hamilton, Miss	Crawford, Miss	Agricultural College, Miss.	5.55	Address before Hamilton farmer's institute.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Corinth, Miss	Iuka, Miss	Washington, D. C.	3.70	Educational tour of Hon. E. S. Candler, jr.
Sept. 4	do	do	do	Booneville, Miss	Corinth, Miss	do	3.11	Do.
Sept. 4-7	E. T. Allen	Chief inspector	Official	Sacramento, Cal	Portland, Oreg	Portland, Oreg	67.00	In attendance at supervisors' meeting and National Irrigation Congress.
Do	A. C. Shaw	Principal examiner	do	do	Sacramento, Cal	Washington, D. C.	12.45	In attendance at supervisors' meeting.
Sept. 5	C. L. Hill	Forest assistant	Unofficial	Naplesville, Ala	Naplesville, Ala	do	None.	Address before the board of education.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Guntown, Miss	Booneville, Miss	do	1.74	Educational tour of Hon. E. S. Candler, jr.
Sept. 4, 5, 6	G. L. Clothier	Collaborator	do	Agricultural College, Miss.	Agricultural College, Miss.	Agricultural College, Miss.	None.	Address before State "Round Up" farmer's institute.
Sept. 6	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Tupelo, Miss	Guntown, Miss	Washington, D. C.	5.70	Educational tour of Hon. E. S. Candler, jr.
Sept. 7	do	do	do	Fulton, Miss	Tupelo, Miss	do	4.90	Do.
Sept. 9	do	do	do	Amory, Miss	Fulton, Miss	do	6.35	Do.
Sept. 9-11	Samuel H. Bailey	Forest guard	Official	Payson, Ariz	Roosevelt, Ariz	Tonto (N.) National Forest, Ariz.	6.00	Meeting of supervisors and rangers to discuss national forest business.
Do	Jack Barber	Assistant forest ranger.	do	do	Young, Ariz	do	7.67	Do.
Do	J. D. F. Beard	Deputy forest ranger	do	do	Myrtle, Ariz	do	6.67	Do.
Do	Harry L. Castle	do	do	do	Young, Ariz	do	7.00	Do.
Do	William M. Cohen	Forest guard	do	do	do	do	6.00	Do.
Do	Claud Delbridge	do	do	do	do	do	6.00	Do.
Do	Forest Hale	Deputy forest ranger	do	do	Gisela, Ariz	do	4.33	Do.
Do	Julian Journigan	do	do	do	Cline, Ariz	do	8.00	Do.
Do	W. H. Reed	Forest supervisor	do	do	Roosevelt, Ariz	do	7.20	Do.
Do	Robert Thompson	Assistant forest ranger.	do	do	do	do	4.33	Do.
Sept. 10	R. S. Kellogg	Chief, Office of Wood Utilization.	Unofficial	Aberdeen, Miss	Amory, Miss	Washington, D. C.	3.00	Educational tour of Hon. E. S. Candler, jr.
Do	Gifford Pinchot	Forester	do	Tucson, Ariz	Tucson, Ariz	do	None.	Address before mayor and citizens.
Do	R. W. Stuart	Forest supervisor	do	Radersburg, Mont	Great Falls, Mont	Great Falls, Mont	5.00	In attendance at meeting of stockmen.
Sept. 11	H. A. Winkenwerder	Forest assistant	do	Princeville, Ill	Washington, D. C.	Washington, D. C.	61.00	Address before the Old Settlers' Reunion.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Caledonia, Miss	Aberdeen, Miss	do	2.00	Educational tour of Hon. E. S. Candler, jr.
Sept. 12	G. L. Clothier	Callaborator	do	Gulfport, Miss	Agricultural College, Miss.	Agricultural College, Miss.	None.	Address before the Mississippi Pine Association.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Columbus, Miss	Caledonia, Miss	Washington, D. C.	2.50	Educational tour of Hon. E. S. Candler, jr.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Sept. 10-12.	E. T. Allen	Chief inspector	Unofficial	Grants Pass, Oreg.	Portland, Oreg.	Portland, Oreg.	$28.30	In attendance at meeting of Oregon Irrigation Association, by invitation.
Sept. 13	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Starkeville, Miss.	Columbus, Miss.	Washington, D. C.	6.50	Educational tour of Hon. E. S. Candler, jr.
Sept. 14	Zeph Jones	Forest supervisor	do	Pinedale, Wyo	Pinedale, Wyo.	Pinedale, Wyo.	None.	In attendance at meeting of stockmen.
Do	A. F. Potter	Assistant forester	do	do	Rock Springs, Wyo.	Washington, D. C.	29.75	In attendance, by invitation, stockmen's mass meeting.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Macon, Miss.	Starkeville, Miss.	do	6.95	Educational tour of Hon. E. S. Candler, jr.
Sept. 15	R. E. Benedict	Chief inspector	do	Austin, Nev.	Austin, Nev.	Salt Lake City, Utah	5.00	In attendance at meeting of stockmen by invitation.
Sept. 16	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Lexington, Miss.	Macon, Miss.	Washington, D. C.	48.48	Educational tour of Hon. B. G. Humphries.
Sept. 18	J. W. Nelson	Forest supervisor	do	Keystone, Wyo.	Saratoga, Wyo.	Saratoga, Wyo.	6.80	In attendance at miners' meeting.
Sept. 23	A. B. Recknagel	Chief, section of reconnaissance.	do	Springfield, Ga.	Washington, D. C.	Washington, D.C.	27.70	Educational tour of Hon. Chas. G. Edwards.
Sept. 24	do	do	do	Oliver, Ga.	Springfield, Ga.	do	4.65	Do.
Sept. 25	do	do	do	Millen, Ga.	Oliver, Ga.	do	2.82	Do.
Do	W. L. Hall	Assistant forester	do	Norfolk, Va.	Washington, D. C.	do	14.90	Address before the American Pomological Society at Jamestown Exposition.
Sept. 26	Thomas E. Will	Collaborator	do	Raleigh, N. C.	do	do	10.30	Address before the Chamber of Commerce and Industry.
Do	F. W. Besley	do	do	Kensington, Md.	Baltimore, Md.	Baltimore, Md.	None.	Address before the Men's Club of the Warner Memorial Presbyterian Church.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Waynesboro, Ga.	Millen, Ga.	Washington, D.C.	2.51	Educational tour of Hon. Chas. G. Edwards.
Sept. 27	Gifford Pinchot	Forester	do	St. Paul, Minn.	St. Paul, Minn.	do	None.	Address before Commercial Club.
Do	Thos. E. Will	Collaborator	do	Durham, N. C.	Raleigh, N. C.	do	11.08	Address before Trinity College.
Do	Enos A. Mills	Forest agent	do	Durango, Colo	Estes Park, Colo.	do	35.85	Address before the Durango Women's Club.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Swainsboro, Ga.	Waynesboro, Ga.	do	6.95	Educational tour of Hon. Chas. G. Edwards.
Do	do	do	do	Lyons, Ga.	Swainsboro, Ga.	do	1.00	Do.
Sept. 28	Enos A. Mills	Forest agent	do	Durango, Colo	Durango, Colo	do	None.	Address before pupils of public school.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Vidalia, Ga.	Lyons, Ga.	Lyons, Ga.	3.03	Educational tour of Hon. Charles G. Edwards.

Do	Thomas E. Will	Collaborator	do	Winston-Salem, N. C.	Durham, N. C.	do	5.62	Address before the Winston-Salem Board of Trade.
Sept. 30	Enos A. Mills	Forest agent	do	Trinidad, Colo	Durango, Colo	do	30.25	Address before the Durango Woman's Club.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Statesboro, Ga	Lyons, Ga	do	5.74	Educational tour of Hon. Charles G. Edwards.
Do	Gifford Pinchot	Forester	do	Helena, Mont	Helena, Mont	do	None.	Address before the Civic Club of Helena.
Do	W. H. Reed	Forest supervisor	do	Payson, Ariz	Payson, Ariz	Roosevelt, Ariz	None.	In attendance at meeting of stockmen.
Oct. 1	A. B. Recknagel	Forest assistant	do	Glennville, Ga	Statesboro, Ga	Washington, D. C.	4.00	Educational tour of Hon. C. G. Edwards.
Do	Enos A. Mills	Forest agent	do	Trinidad, Colo	Trinidad, Colo	do	13.40	Address before board of education.
Do	Thomas E. Will	Collaborator	do	Charlotte, N. C	Winston-Salem, N. C.	do	11.74	Address before Greater Charlotte Club.
Oct. 1-3	W. O. Conley	Forest guard	Official	Woodrock, Big Horn National Forest, Wyo.	Within Big Horn National Forest, Wyo.	Big Horn National Forest, Wyo.	4.85	Meeting of supervisors and rangers to discuss national forest business.
Do	Charles A. Davis	Deputy forest ranger	do	do	do	do	4.85	Do.
Do	Oscar A. Emery	Forest guard	do	do	do	do	4.86	Do.
Do	August Hettinger	Deputy forest ranger	do	do	do	do	4.86	Do.
Do	Abel Z. Hurtt	Assistant forest ranger.	do	do	do	do	4.85	Do.
Do	William E. Jackson	Forest supervisor	do	do	do	do	4.86	Do.
Do	Frank A. Kueny	Forest ranger	do	do	do	do	4.86	Do.
Do	Frank W. Kurtz	Assistant forest ranger.	do	do	do	do	4.85	Do.
Do	Lewis N. McCreary	do	do	do	do	do	4.86	Do.
Do	Roderick D. McDonald.	do	do	do	do	do	4.85	Do.
Do	Edgar W. Smith	do	do	do	do	do	4.86	Do.
Do	Arthur Snyder	Deputy forest ranger	do	do	do	do	4.85	Do
Do	Andrew C. Stockwell	do	do	do	do	do	4.85	Do.
Oct. 2	Enos A. Mills	Forest agent	do	Pueblo, Colo	Trinidad, Colo	Washington, D. C.	10.85	Address before board of education.
Do	A. B. Recknagel	Forest assistant	do	Darien, Ga	Glennville, Ga	do	3.45	Educational tour of Hon. Charles G. Edwards.
Oct. 2-5	C. H. Adams	Inspector of grazing.	Official	Chelan, Wash	Wenatchee, Wash	do	14.50	In attendance at supervisors' and rangers' meeting, by direction of Forester.
Do	Harry Blankenship	Forest guard	do	do	Chelan, Wash	Washington (Chelan Division) National Forest, Wash.	6.25	Meeting of rangers and supervisors to discuss national forest business.
Do	E. O. Blankenship	do	do	do	Stehekin, Wash	do	7.00	Do.
Do	S. A. Blankenship	Deputy forest ranger.	do	do	Leavenworth, Wash	Wenatchee National Forest, Wash.	22.15	Do.
Do	M. L. Erickson	Inspector	do	do	Wenatchee, Wash	Portland, Oreg	14.00	Do.
Do	N. C. Faulkner	Assistant forest ranger	do	do	Twisp, Wash	Washington (Chelan Division) National Forest, Wash.	14.25	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 2-5	Earl Halverson	Forest guard	Official	Chelan, Wash	Chelan, Wash	Washington (Chelan Division) National Forest, Wash.	$6.75	Meeting of rangers and supervisors to discuss national forest business.
Do	H. T. Hansen	do	do	do	Leavenworth, Wash	Wenatchee National Forest, Wash.	22.65	Do.
Do	T. L. Launer	do	do	do	Orient, Wash	Colville, National Forest, Wash.	22.90	Do.
Do	Robert Meddock	do	do	do	Wauconda, Wash	do	26.80	Do.
Do	Geo. Milham	Forest supervisor	do	do	Chelan, Wash	Washington (Chelan Division) National Forest, Wash.	None.	Do.
Do	P. C. Paterson	Forest guard	do	do	North Bend, Wash	Wenatchee National Forest, Wash.	39.60	Do.
Do	R. B. Pierpont	Assistant forest ranger.	do	do	Conconully, Wash	Washington (Chelan Division) National Forest, Wash.	25.55	Do.
Do	T. R. Pinkerton	Forest guard	do	do	do	do	19.00	Do.
Do	C. W. Ray	do	do	do	Ellensburg, Wash	Wenatchee National Forest, Wash.	18.75	Do.
Do	Clement C. Reid	do	do	do	Wavillah, Wash	Colville National Forest, Wash.	25.95	Do.
Do	A. C. Ringland	Chief of boundaries	do	do	Chelan, Wash	Washington, D. C.	10.50	Do.
Do	D. S. Rice	Forest agent	do	do	do	Washington (Chelan Division) National Forest, Wash.	6.25	Do.
Do	Max Rothkugel	do	do	do	do	do	None.	Do.
Do	D. B. Sheller	Forest supervisor	do	do	Wenatchee, Wash	Wenatchee National Forest, Wash.	18.25	Do.
Do	Clyde Simmons	Forest guard	do	do	Ellensburg, Wash	do	18.25	Do.
Do	Eugene W. Wheeler	do	do	do	Bodie, Wash	Colville National Forest, Wash.	23.35	Do.
Oct. 3	Enos A. Mills	Forest agent	Unofficial	Pueblo, Colo	Pueblo, Colo	Washington, D. C.	8.25	Address before State Federation of Women's Clubs.
Do	Gifford Pinchot	Forester	do	Keokuk, Iowa	Keokuk, Iowa	do	None.	Address before Business Men's League.
Do	A. B. Recknagel	Forest assistant	do	Ludewici, Ga	Darien, Ga	do	7.50	Educational tour of Hon. Charles G. Edwards.
Do	Thomas E. Will	Collaborator	do	Spartanburg, S. C.	Charlotte, N. C.	do	7.75	Address before Wofford College Lyceum.

Oct. 3, 4	A. F. Potter	Assistant forester	Official	Chelan, Wash	Wenatchee, Wash	do	12.75	In attendance, by direction of Forester, at meeting of supervisors and rangers.
Oct. 4	Enos A. Mills	Forest agent	Unofficial	Topeka, Kans	Pueblo, Colo	do	27.30	Address before West Side Forestry Club.
Do	A. B. Recknagel	Forest assistant	do	Pembroke, Ga	Ludewici, Ga	do	2.58	Educational tour of Hon. Charles G. Edwards.
Do	Thomas E. Will	Collaborator	do	Savannah, Ga	Spartanburg, S. C	do	13.89	Address before Savannah Board of Trade.
Do	H. N. Wheeler	Forest supervisor	do	Loveland, Colo	Estes Park, Colo	Estes Park, Colo	10.00	In attendance at meeting of Loveland Chamber of Commerce.
Oct. 5	Enos A. Mills	Forest agent	do	Abilene, Kans	Topeka, Kans	Washington, D. C	9.85	Address before State Federation of Women's Clubs.
Do	A. B. Recknagel	Forest assistant	do	Savannah, Ga	Pembroke, Ga	do	19.43	Educational tour of Hon. Charles G. Edwards.
Oct. 6	Enos A. Mills	Forest agent	do	Lawrence, Kans	Abilene, Kans	do	7.50	Address before Women's Club.
Oct. 7	do	do	do	do	Lawrence, Kans	do	7.00	Address to school children.
Do	C. E. Rachford	Forest supervisor	do	Alturas, Cal	Alturas, Cal	Alturas, Cal	None.	In attendance at meeting of Modoc Live Stock Association.
Do	Thos. E. Chidsey	do	do	Pendleton, Oreg	Heppner, Oreg	Heppner National Forest.	12.00	In attendance at meeting of Oregon Wool Growers' Association, by direction of Forester.
Do	H. Ireland	do	do	do	Sumpter, Oreg	Sumpter, Oreg	20.45	Do.
Do	A. F. Potter	Assistant Forester	do	do	Pendleton, Oreg	Washington, D. C	4.25	In attendance, by invitation, meeting of Oregon Wool Growers' Association.
Oct. 7, 8	Will C. Barnes	Inspector of grazing.	do	Albuquerque, N. Mex.	Albuquerque, N. Mex.	do	None.	Meeting of New Mexico's Wool Growers' Association.
Oct. 8	Enos A. Mills	Forest agent	do	Kansas City, Kans.	Lawrence, Kans	do	12.20	Address under auspices of Women's Club.
Do	Thomas E. Will	Collaborator	do	Columbia, S. C	Savannah, Ga	do	17.63	Address before chamber of commerce.
Do	H. F. Studley	Forest assistant	do	Camden Court House, N. C.	Washington, D. C	do	11.20	Educational tour of Hon. J. H. Small.
Oct. 8-11	C. H. Adams	Inspector of grazing.	Official	Seattle, Wash	Chelan, Wash	do	33.60	In attendance at meeting of supervisors and rangers, by direction of Forester.
Do	E. T. Allen	Chief inspector	do	do	Portland, Oreg	Portland, Oreg	24.75	Meeting of supervisors and rangers to discuss national forest business.
Do	F. E. Ames	Inspector	do	do	do	do	23.56	Do.
Do	Charles Armstrong	Acting forest supervisor.	do	do	Sumas, Wash	Washington (N.) National Forest, Wash.	19.50	Do.
Do	C. S. Chapman	Assistant Forester	do	do	Portland, Oreg	Washington, D. C	24.60	Do.
Do	O. S. Coleman	Deputy forest ranger.	do	do	Baker, Wash	Washington (W.) National Forest, Wash.	14.80	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 8-11	M. L. Erickson	Inspector	Official	Seattle, Wash	Chelan, Wash	Portland, Oreg	$44.50	Meeting of supervisors and rangers to discuss national forest business.
Do	C. L. Farrar	Deputy forest ranger	do	do	Sumas, Wash	Washington (W.) National Forest, Wash.	None.	Do.
Do	E. J. Finch	Assistant forest ranger.	do	do	Brinnon, Wash	Olympic National Forest, Wash.	14.50	Do.
Do	E. E. Fishel	Deputy forest ranger	do	do	Humptulips, Wash	do	14.00	Do.
Do	Maurice Halimton	Assistant forest ranger.	do	do	Sumas, Wash	Washington (W.) National Forest, Wash.	14.30	Do.
Do	Fred Hanson	Forest supervisor	do	do	Hoodsport, Wash	Olympic National Forest, Wash.	17.70	Do.
Do	F. E. Harte	Assistant forest ranger.	do	do	Gold Basin, Wash	Washington (W.) National Forest, Wash.	14.75	Do.
Do	H. S. Hemingway	Clerk	do	do	Sumas, Wash	do	21.25	Do.
Do	L. D. Hurt	Assistant forest ranger.	do	do	Silverton, Wash	do	15.27	Do.
Do	Bert P. Kirkland	Forest assistant	do	do	Sumas, Wash	do	5.35	Do.
Do	Paul Lanfeld	Deputy forest ranger	do	do	Humptulips, Wash	Olympic National Forest, Wash.	14.00	Do.
Do	Alex Larsen	Assistant forest ranger.	do	do	Marblemount, Wash	Washington (W.) National Forest, Wash.	23.45	Do.
Do	A. E. McKay	do	do	do	Sauk, Wash	do	21.80	Do.
Do	Chris Morgenroth	Forest ranger	do	do	Hoodsport, Wash	Olympic National Forest, Wash.	19.90	Do.
Do	E. G. Newman	Deputy forest ranger	do	do	Quiniault, Wash	do	26.90	Do.
Do	A. C. Ringland	Chief of boundaries	do	do	Seattle, Wash	Washington, D. C.	28.60	Do.
Do	J. R. Smith	Deputy forest ranger	do	do	Glacier, Wash	Washington (W) National Forest, Wash.	24.52	Do.
Do	Thomas Thompson	Assistant forest ranger.	do	do	Sauk, Wash	do	19.35	Do.
Do	W. G. Weigle	Assistant chief of management.	do	do	Seattle, Wash	Washington, D. C.	18.00	Do.
Oct. 9	Thomas E. Will	Collaborator	Unofficial	Greenville, S. C	Columbia, S. C	do	8.31	Address before board of trade.
Do	H. F. Studley	Forest assistant	do	Currituck, N. C	Camden, N. C	do	8.08	Educational tour of Hon. J. H. Small.

Oct. 10	Fred G. Plummer	Geographer	do	San Diego, Cal	San Diego, Cal	do	None.	Address in Episcopal Church at request of St. Andrew's Society.
Do	Enos A. Mills	Forest agent	do	Hot Springs, Ark	Kansas City, Kans	do	28.90	Address before Arkansas State Fair.
Do	Harold S. Betts	Chief, section of wood uses.	do	New York City	Washington, D. C.	do	22.10	Address before Carriage Builders' National Association.
Do	H. F. Studley	Forest assistant	do	Edenton, N. C	Currituck, N. C	do	2.25	Educational tour of Hon. J. H. Small.
Oct. 11	Thomas E. Will	Collaborator	do	Charleston, S. C	Greenville, S. C	do	7.82	Address before chamber of commerce.
Do	H. F. Studley	Forest assistant	do	Columbia, N. C	Edenton, N. C	do	None.	Educational tour of Hon. J. H. Small
Oct. 12	Gifford Pinchot	Forester	do	Kansas City, Mo	Kansas City, Mo	do	None.	Address before commercial club.
Do	Enos A. Mills	Forest agent	do	Ottumwa, Iowa	Hot Springs, Ark	do	23.10	Address before Women's Club.
Oct. 13	do	do	do	Des Moines, Iowa	Ottumwa, Iowa	do	12.60	Address before school children.
Do	do	do	do	do	Des Moines, Iowa	do	None.	Address before high school pupils.
Do	do	do	do	do	do	do	None.	Address before Congress of Mothers.
Oct. 13-16	C. H. Adams	Inspector of grazing	Official	Portland, Oreg	Seattle, Wash	do	26.65	In attendance at supervisors' and rangers' meeting, by direction of Forester.
Do	E. T. Allen	Chief inspector	do	do	Portland, Oreg	Portland, Oreg	None.	Meeting of rangers and supervisors to discuss national forest business.
Do	G. F. Allen	Forest supervisor	do	do	Orting, Wash	Rainier National Forest, Wash.	25.55	Do.
Do	Marion Burlingame	Forest guard	do	do	Wamic, Oreg	Cascade (N) National Forest, Oreg.	10.75	Do.
Do	C. S. Chapman	Assistant forester	do	do	Seattle, Wash	Washington, D. C.	37.10	Do.
Do	Chauncey Coffman	Forest guard	do	do	Sandy, Oreg	Cascade (N) National Forest, Oreg.	13.20	Do.
Do	W. M. Cooper	Deputy forest ranger	do	do	Mount Hood, Oreg	do	15.80	Do.
Do	Harry Crawford	Forest guard	do	do	North Yakima, Wash.	Ranier National Forest, Wash.	29.05	Do.
Do	John M. Dinsmoore	do	do	do	Detroit, Oreg	Cascade (N) National Forest, Oreg.	18.45	Do.
Do	Elmer W. Gribble	Deputy forest ranger	do	do	Hoover, Oreg	do	20.15	Do.
Do	R. N. Gribble	Forest guard	do	do	Mount Hood, Oreg	do	15.00	Do.
Do	Walter L. Gribble	Deputy forest ranger	do	do	do	do	19.55	Do.
Do	H. L. Hurd	Assistant forest ranger.	do	do	Orting, Wash	Rainier National Forest, Wash.	15.40	Do.
Do	George Ledford	Forest guard	do	do	Smock, Oreg	Cascade (N) National Forest, Oreg.	13.75	Do.
Do	W. A. McCullough	Assistant forest ranger.	do	do	Ashford, Wash	Rainier National Forest, Wash.	28.30	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 13-16	E. C. Owens	Forest guard	Official	Portland, Oreg	Mount Hood, Oreg.	Cascade (N) National Forest, Oreg.	$14.80	Meeting of rangers and supervisors to discuss national forest business.
Do	C. H. Parks	Deputy forest ranger.	do	do	Orting, Wash	Rainier National Forest, Wash.	27.04	Do.
Do	Joseph H. Prout	do	do	do	Wamic, Oreg	Cascade (N) National Forest, Oreg.	21.05	Do.
Do	A. C. Ringland	Chief of boundaries	do	do	Portland, Oreg	Washington, D. C	19.10	Do.
Do	J. B. Senecal	Assistant forest ranger.	do	do	Dufur, Oreg	Cascade (N) National Forest, Oreg.	17.20	Do.
Do	R. S. Shelley	Deputy forest ranger.	do	do	Hood River, Oreg	do	10.25	Do.
Do	Perry A. South	Forest guard	do	do	Sisters, Oreg	do	24.75	Do.
Do	Roy E. Thomas	do	do	do	Mosier, Oreg	do	14.20	Do.
Do	E. J. Wegal	Assistant forest ranger.	do	do	Carson, Wash	Rainier National Forest, Wash.	10.85	Do.
Do	W. G. Weigle	Assistant chief of management.	do	do	Portland, Oreg	Washington, D. C	22.20	Do.
Do	Hiram R. Wilcox	Assistant forest ranger.	do	do	Estacada, Oreg	Cascade (N) National Forest, Oreg.	5.65	Do.
Do	H. R. Wilson	do	do	do	do	do	5.65	Do.
Oct. 14	C. L. Hill	Forest assistant	Unofficial	Montgomery, Ala	Montgomery, Ala	Washington, D. C	None.	Address before farmers' meeting.
Do	H F. Studley	do	do	Swan Quarter, N. C.	Columbia, N. C	do	14.45	Educational tour of Hon. J. H. Small.
Do	Thomas R. Stewart	Deputy forest supervisor.	do	Ortiz, Colo	Santa Fe, N. Mex	Santa Fe, N. Mex	19.80	In attendance at meeting of Los Pinos Wool Growers' Association.
Oct. 15	C. L. Hill	Forest assistant	do	Selma, Ala	Montgomery, Ala	Washington, D. C	None.	Address at Alabama State Fair.
Do	Fred G. Plummer	Geographer	do	Point Loma, Cal	San Diego, Cal	do	None.	Address before forest school.
Do	Enos A. Mills	Forest agent	do	Waterloo, Iowa	Des Moines, Iowa	do	5.00	Address Woman's Club.
Do	do	do	do	do	Waterloo, Iowa	do	None.	Address before city schools.
Do	do	do	do	do	do	do	5.00	Address before high school pupils.
Do	W. K. Hatt	Engineer of timber tests.	do	Milwaukee, Wis	La Fayette, Ind	do	33.20	Address before Association of Railroad Superintendents of Bridges and Buildings.
Do	Thomas E. Will	Collaborator	do	Augusta, Ga	Charleston, S. C	do	17.60	Address before chamber of commerce.
Oct. 16	Enos A. Mills	Forest agent	do	Cheyenne, Wyo	Waterloo, Iowa	do	36.97	State Federation of Women's Clubs.

Do.	H. F. Studley	Forest assistant	do	Winton, N. C.	Swan Quarter, N. C.	do	26.45	Educational tour of Hon. J. H. Small.
Oct. 17	Thomas E. Will	Collaborator	do	Columbus, Ga.	Augusta, Ga.	do	18.64	Address before board of trade.
Oct. 18	A. T. Boisen	Forest assistant	do	Bloomington, Ill.	Bloomington, Ind.	do	11.48	Address before Illinois Federation of Women's Clubs.
Do.	Thomas E. Will	Collaborator	do	Montgomery, Ala.	Columbus, Ga.	do	19.79	Address before commercial club.
Oct. 18-21	C. H. Adams	Inspector of grazing	do	Roseburg, Oreg.	Portland, Oreg.	do	20.50	In attendance at supervisors' and rangers' meeting, by direction of Forester.
Oct. 18-23	E. T. Allen	Chief inspector	do	do	Roseburg, Oreg.	Portland, Oreg.	18.10	Meeting of supervisors and rangers to discuss national forest business.
Do.	H. V. Anderson	Forest guard	do	do	Grants Pass, Oreg.	Siskiyou National Forest, Oreg.	12.25	Do.
Do.	M. J. Anderson	Forest supervisor	do	do	do	do	12.25	Do.
Do.	S. C. Bartrum	do	do	do	Roseburg, Oreg.	Cascade (S.) National Forest, Oreg.	None.	Do.
Do.	Jay Billings	Assistant forest ranger.	do	do	Silver Lake, Oreg.	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do.	G. A. Bonebrake	Deputy forest ranger.	do	do	Roseburg, Oreg.	Cascade (S.) National Forest, Oreg.	6.00	Do.
Do.	James Brady	Assistant forest ranger.	do	do	Silver Lake, Oreg.	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do.	G. B. Brown	Forest ranger	do	do	do	do	68.00	Do.
Do.	M. T. Cannon	Forest guard	do	do	Lowell, Oreg.	Cascade (S.) National Forest, Oreg.	24.00	Do.
Do.	C. S. Chapman	Assistant forester	do	do	Portland, Oreg.	Washington, D. C.	18.25	Do.
Do.	G. C. Cottrell	Forest guard	do	do	Prospect, Oreg.	Cascade (S.) National Forest, Oreg.	25.00	Do.
Do.	J. DeWitt	do	do	do	Grants Pass, Oreg.	Siskiyou National Forest, Oreg.	16.75	Do.
Do.	M. S. Durbin	Assistant forest ranger.	do	do	Waldport, Oreg.	Tillamook and Umpqua national forests, Oreg.	29.61	Do.
Do.	J. S. Elder	do	do	do	Paisley, Oreg.	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do.	J. A. Gaslin	Forest guard	do	do	Steamboat, Oreg.	Siskiyou National Forest, Oreg.	16.50	Do.
Do.	J. G. Geddings	do	do	do	Grants Pass, Oreg.	do	17.10	Do.
Do.	J. E. Gribble	do	do	do	do	do	24.50	Do.
Do.	H. M. Guthrie	Deputy forest supervisor.	do	do	do	do	12.25	Do.
Do.	S. D. Hammock	Forest guard	do	do	do	do	19.30	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 18-23	V. V. Harpman	Forest guard	Official	Roseburg, Oreg	Roseburg, Oreg	Cascade (S.) National Forest, Oreg.	$18.00	Meeting of supervisors and rangers to discuss national forest business.
Do	L. Hartley	do	do	do	do	do	11.00	Do.
Do	J. R. Harvey	Forest ranger	do	do	Hazeldell, Oreg	do	24.00	Do.
Do	Guy M. Ingram	Forest supervisor	do	do	Lakeview, Oreg	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do	C. W. Jackson	Forest guard	do	do	Canyonville, Oreg	Cascade (S.) National Forest, Oreg.	10.00	Do.
Do	W. H. B. Kent	Inspector	do	do	Roseburg, Oreg	Portland, Oreg	10.00	Do.
Do	N. G. Kroppe	Deputy forest ranger	do	do	Ashland, Oreg	Ashland National Forest, Oreg.	14.95	Do.
Do	George E. Leach	Assistant forest ranger.	do	do	Dolph, Oreg	Tillamook and Umpqua national forests, Oreg.	24.85	Do.
Do	S. Leavitt	Forest ranger	do	do	Lakeview, Oreg	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do	Malvin Lewis	Forest guard	do	do	Grants Pass, Oreg	Siskiyou National Forest, Oreg.	12.25	Do.
Do	S. L. McKee	Assistant forest ranger.	do	do	Medford, Oreg	Cascade (S.) National Forest, Oreg.	25.00	Do.
Do	N. F. Macduff	Forest assistant	do	do	Grants Pass, Oreg	Siskiyou National Forest, Oreg.	12.25	Do.
Do	E. H. Mahn	Forest guard	do	do	McKenzie, Oreg	Cascade (S.) National Forest, Oreg.	9.00	Do.
Do	N. B. Millbury	do	do	do	Dorthan, Oreg	Siskiyou National Forest, Oreg.	18.40	Do.
Do	S. A. Moore	do	do	do	Medford, Oreg	Cascade (S.) National Forest, Oreg.	25.00	Do.
Do	M. E. Musgrove	Assistant forest ranger.	do	do	Lakeview, Oreg	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do	D. W. Myers	Forest guard	do	do	Wellen, Oreg	Cascade (S.) National Forest, Oreg.	17.00	Do.
Do	W. J. Nichols	Assistant forest ranger.	do	do	Fort Klamath	do	26.00	Do.
Do	C. V. Oden	Deputy forest ranger	do	do	Roseburg Oreg	do	None.	Do.

Do.....	E. P. Petitt.....	Assistant forest ranger.	.....do.....	.....do.....	Silver Lake, Oreg...	Fremont and Goose Lake national forests, Oreg.	68.00	Do.
Do.....	P. S. Rice.....	.....do.....	.....do.....	.....do.....	Gardiner, Oreg.....	Tillamook and Umpqua national forests, Oreg.	29.61	Do.
Do.....	A. C. Ringland.....	Chief, boundaries....	.....do.....	.....do.....	Roseburg, Oreg.....	Washington, D. C..	7.50	Do.
Do.....	Clyde R. Seitz.....	Forest supervisor...	.....do.....	.....do.....	Eugene, Oreg.....	Tillamook and Umpqua national forests, Oregon.	10.00	Do.
Do.....	Wilbur Stitwell.....	Assistant forest ranger	.....do.....	.....do.....	Pitner, Oreg.....	.....do.....	21.50	Do
Do.....	S. S. Swenning.....	Forest ranger.....	.....do.....	.....do.....	Roseburg, Oreg.....	Cascade (S.) National Forest, Oreg.	30.00	Do.
Do.....	Ira Tungate.....	Forest guard.....	.....do.....	.....do.....	Hutton, Oreg.....	Siskiyou National Forest, Oreg.	22.60	Do.
Do.....	W. G. Weigle.....	Assistant chief, management.	.....do.....	.....do.....	Roseburg, Oreg.....	Washington, D. C..	10.50	Do.
Do.....	C. H. Young.....	Assistant forest ranger.	.....do.....	.....do.....	Mapleton, Oreg:....	Tillamook and Umpqua national forests, Oreg.	11.70	Do.
Oct. 19.....	Enos A. Mills.....	Forest agent.....	Unofficial..	Rapid City, S. Dak.	Cheyenne, Wyo.....	Washington, D. C..	22.20	Address before Black Hills Federation of Women's Clubs.
Oct. 20.....	Fred G. Plummer...	Geographer.....	.....do.....	San Diego, Cal.....	San Diego, Cal.....	.....do.....	None.	Address before public school children.
Oct. 21.....	Thomas E. Will.....	Collaborator.....	.....do.....	Asheville, N. C.....	Montgomery, Ala..	Washington, D. C..	58.50	Address before board of trade.
Oct. 22-29..	J. F. Anderson.....	Assistant forest ranger.	Official....	Ephraim, Utah.....	Ephraim, Utah.....	Manti National Forest, Utah.	None.	Meeting of supervisors and rangers to discuss national forest business.
Do.....	J. P. Brockbank.....	.....do.....	.....do.....	.....do.....	Huntington, Utah..	.....do.....	10.50	Do.
Do.....	J. N. Christiansen...	Forest guard.....	.....do.....	.....do.....	Fairview, Utah.....	.....do.....	11.85	Do.
Do.....	Parley Christiansen.	Forest ranger.....	.....do.....	.....do.....	Mayfield, Utah.....	.....do.....	6.75	Do.
Do.....	A. W. Jensen.....	Forest supervisor...	.....do.....	.....do.....	Ephraim, Utah.....	.....do.....	None.	Do.
Do.....	B. E. Mattsson.....	Assistant forest ranger.	.....do.....	.....do.....	.....do.....	.....do.....	None.	Do.
Do.....	Joseph W. Humphrey.	.....do.....	.....do.....	.....do.....	Orangeville, Utah..	.....do.....	10.75	Do.
Do.....	F. W. Reed.....	Inspector.....	.....do.....	.....do.....	Salt Lake City, Utah.	Salt Lake City, Utah.	11.35	Do.
Do.....	Charles L. Thorpe...	Forest guard.....	.....do.....	.....do.....	Clear Creek, Utah..	Manti National Forest, Utah.	16.30	Do.
Do.....	D. H. Williams.....	Deputy forest ranger.	.....do.....	.....do.....	Emery, Utah.....	.....do.....	14.50	Do.
Do.....	Ernest Winkler.....	.....do.....	.....do.....	.....do.....	Mount Pleasant, Utah.	.....do.....	10.50	Do.
Oct. 23.....	Enos A. Mills.....	Forest agent..	Unofficial..	Salem, Oreg.....	Rapid City, S. Dak..	Washington, D. C..	66.25	Address before the Oregon State Federation of Women's Clubs.
Do.....	....do.....	.....do.....	.....do.....	.....do.....	Salem, Oreg.....	.....do.....	7.00	Address to school children

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 23-26	C. H. Adams	Inspector of grazing.	Official	La Grande, Oreg	Roseburg, Oreg	Washington, D. C.	$31.75	In attendance by direction Forester.
Do.	Albert Baker	Forest guard	do	do	Troy, Oreg	Wenaha National Forest, Oreg.	7.50	Meeting of rangers and supervisors to discuss national forest business.
Do.	Charles Black	Forest ranger	do	do	Halfway, Oreg	Imnaha National Forest, Oreg.	18.10	Do.
Do.	Leo Blevins	do	do	do	Cove, Oreg	do	11.00	Do.
Do.	C. S. Chapman	Assistant forester	do	do	Roseburg, Oreg	Washington, D. C.	27.85	Do.
Do.	E. H. Darling	Expert	do	do	La Grande, Oreg	do	12.00	Do.
Do.	Newton V. Downs	Forest guard	do	do	Wallowa, Oreg	Imnaha National Forest, Oreg.	24.55	Do.
Do.	Earle W. Dunn	do	do	do	do	do	11.00	Do.
Do.	Walter A. Fay	Forest ranger	do	do	Chico, Oreg	do	18.80	Do.
Do.	Otto F. Green	Assistant forest ranger.	do	do	La Grande, Oreg	Wenaha National Forest, Oreg.	9.50	Do.
Do.	J. F. McClain	do	do	do	Joseph, Oreg	Imnaha National Forest, Oreg.	23.35	Do.
Do.	Thomas P. McKenzie.	Deputy forest ranger.	do	do	Dayton, Wash	Wenaha National Forest, Oreg.	17.50	Do.
Do.	W. A. Moore	Forest guard	do	do	Halfway, Oreg	Imnaha National Forest, Oreg.	11.00	Do.
Do.	R. Moss	do	do	do	Gibbon, Oreg	Wenaha National Forest, Oreg.	9.50	Do.
Do.	Howard K. O'Brien.	Forest supervisor	do	do	Wallowa, Oreg	Imnaha National Forest, Oreg.	22.80	Do.
Do.	J. M. Schmitz	do	do	do	Walla Walla, Wash.	Wenaha National Forest, Oreg.	16.65	Do.
Do.	Earl H. Sherod	Assistant forest ranger.	do	do	Medical Springs, Oreg.	Imnaha National Forest, Oreg.	15.90	Do.
Do.	W. G. Weigle	Assistant chief of management.	do	do	Roseburg, Oreg	Washington, D. C.	28.25	Do.
Do.	George H. Barney	Forest supervisor	do	Richfield, Utah	Escalante, Utah	Aquarius National Forest, Utah.	15.79	Do.
Do.	R. E. Benedict	Chief inspector	do	do	Richfield, Utah	Salt Lake City, Utah.	2.00	Do.
Do.	John Bernard	Assistant forest ranger.	do	do	Salina, Utah	Fish Lake National Forest, Utah.	9.55	Do.
Do.	Thomas J. Burke	do	do	do	Beaver, Utah	Beaver and Fillmore National forests, Utah.	18.25	Do.
Do.	T. C. Callister	Deputy forest ranger	do	do	Fillmore, Utah	Fillmore National Forest, Utah.	10.00	Do.

Do.....	James H. De Long...	.....do.....	.....do.....	.....do.....	Circleville, Utah....	Beaver and Fillmore National forests, Utah.	13.80	Do.
Do.....	John A. Ferguson...	Assistant forest ranger.	.....do.....	.....do.....	Monroe, Utah.....	Glenwood National Forest, Utah.	9.55	Do.
Do.....	Walter E. Hanks....	Deputy forest ranger	.....do.....	.....do.....	Escalante, Utah....	Aquarius National Forest, Utah.	15.78	Do.
Do.....	S. E. Henrie.....	.....do.....	.....do.....	.....do.....	Marysville, Utah...	Beaver and Fillmore national forests, Utah.	14.75	Do.
Do.....	William Hurst.....	Forest supervisor....	.....do.....	.....do.....	Beaver, Utah.....	.....do.....	11.25	Do.
Do.....	B. Kenner.....	Deputy forest ranger.	.....do.....	.....do.....	Manti Utah.....	Fillmore National Forest, Utah.	12.15	Do.
Do.....	R. H. Liston.....	.....do.....	.....do.....	.....do.....	Escalante, Utah....	Aquarius National Forest, Utah.	15.79	Do.
Do.....	Olof G. Nielson.....	Assistant forest ranger.	.....do.....	Richfield, Utah.....	Koosharem, Utah..	Fish Lake National Forest, Utah.	9.55	Do.
Do.....	Nelford Pace.....	.....do.....	.....do.....	.....do.....	Loa, Utah.....	.....do.....	12.50	Do.
Do	L. Peterson, jr.....	Deputy forest ranger.	.....do.....	.....do.....	Salina, Utah.....	Fillmore National Forest, Utah.	9.55	Do.
Do.....	Hyrum A. Porter....	Forest guard.....	.....do.....	.....do.....	Escalante, Utah....	Aquarius National Forest, Utah.	15.78	Do.
Do.....	Joseph J. Porter.....	Forest ranger.....	.....do.....	.....do.....	.....do.....	.....do.....	15.79	Do.
Do.....	Ambrose Shurtz.....	Deputy forest ranger.	.....do.....	.....do.....	.....do.....	.....do.....	15.78	Do.
Do.....	Josiah Shurtz.....	Assistant forest ranger.	.....do.....	.....do.....	.....do.....	.....do.....	15.79	Do.
Do.....	N. E. Snell.....	Forest supervisor....	.....do.....	.....do.....	Salina, Utah.....	Fish Lake and Glenwood National Forests, Utah.	7.05	Do.
Do.....	Albert Tuft.....	Forest guard.....	.....do.....	.....do.....	Monroe, Utah.....	Glenwood National Forest, Utah.	9.00	Do.
Oct. 25.....	F. W. Morrell.....	Inspector.....	Unofficial..	Alamosa, Colo.....	Monte Vista, Colo..	Denver, Colo.....	7.65	Meeting of Rio Grande Stock Growers' Association.
Do.....	A. A. Parker.....	Deputy forest supervisor.	.....do.....	.....do.....	.....do.....	Monte Vista, Colo..	7.65	Do.
Do.....	F. C. Spencer.....	Forest supervisor.....	.....do.....	.....do.....	.....do.....	.....do.....	7.65	Do.
Do.....	Enos A. Mills.....	Forest agent.....	.....do.....	Portland, Oreg.....	Salem, Oreg.....	Washington, D. C..	8.90	Address to Y. W. C. A.
Do.....	.....do.....	.....do.....	.....do.....	.....do.....	Portland, Oreg.....	.....do.....	8.15	Address before the Woman's Club.
Do.....	McGarvey Cline.....	Assistant chief, Office of Wood Utilization.	.....do.....	Jamestown, Va.....	Washington, D. C..	Washington, D. C..	15.80	Address before National Advisory Board.
Do.....	R. S. Kellogg.....	Chief, Office of Wood Utilization.	.....do.....	.....do.....	.....do.....	.....do.....	11.50	Do.
Oct. 28-30..	Gifford Pinchot.....	Forester.....	Official.....	Tucson, Ariz.....	Tucson, Ariz.....	Washington, D. C..	None.	Meeting of Forester and supervisors to discuss national forest business.
Do.....	W. H. Read.....	Forest supervisor....	.....do.....	.....do.....	Roosevelt, Ariz.....	Tonto (N.) National Forest, Ariz.	39.05	Do.
Do.....	Roscoe G. Willson...	Forest ranger.....	.....do.....	.....do.....	Nogales, Ariz.....	Tumacacori National Forest, Ariz.	18.00	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Oct. 29	H. A. Winkenwerder	Forest assistant	Unofficial	Gainesville, Ga	Washington, D. C.	Washington, D. C.	$27.55	Educational tour of Hon. Thomas M. Bell.
Do	do	do	do	Jefferson, Ga	Gainesville, Ga	do	1.44	Do.
Oct. 29-Nov. 1	C. H. Adams	Inspector of grazing	Official	Hot Springs, Oreg.	La Grande, Oreg	do	14.15	In attendance at supervisors' and rangers' meeting, by direction of Forester.
Do	E. T. Allen	Chief inspector	do	do	Portland, Oreg	Portland, Oreg	43.60	Do.
Do	Arthur Bennett	Forest guard	do	do	Canon City, Oreg	Blue Mountains (W) National Forest, Oreg.	11.75	Do.
Do	Cy. J. Bingham	Deputy forest supervisor.	do	do	Prineville, Oreg	do	17.75	Do.
Do	C. S. Chapman	Assistant Forester	do	Blue Mountains, Oreg.	Baker City, Oreg	Washington, D. C.	22.00	Do.
Do	Thos. E. Chidsey	Forest supervisor	do	Hot Springs, Oreg.	Heppner, Oreg	Heppner National Forest, Oreg.	24.10	Do.
Do	D. W. Fisk	Forest guard	do	do	Prairie, Oreg	Blue Mountains (E) National Forest, Oreg.	10.00	Do.
Do	J. S. Frazier	do	do	do	Van, Oreg	do	12.15	Do.
Do	Albert Halstead	do	do	do	Sumpter, Oreg	Blue Mountains (E) National Forest, Oreg.	16.50	Do.
Do	T. N. Hubbard	Assistant forest ranger.	do	do	Prairie, Oreg	Blue Mountains (W) National Forest, Oreg.	11.75	Do.
Do	A. S. Ireland	Forest supervisor	do	do	Prineville, Oreg	do	66.75	Do.
Do	Henry Ireland	do	do	do	Sumpter, Oreg	Blue Mountains (E) National Forest, Oreg.	19.00	Do.
Do	J. B. Kandel	Assistant forest ranger.	do	do	John Day, Oreg	Blue Mountains (W) National Forest, Oreg.	11.75	Do.
Do	W. T. Morris	Forest guard	do	do	Post, Oreg	do	18.00	Do.
Do	Thos. H. Parker	Assistant forest ranger.	do	do	North Powder, Oreg	Blue Mountains (E) National Forest, Oreg.	22.70	Do.
Do	C. L. Pearson	Forest guard	do	do	Riley, Oreg	Blue Mountains, (W) National Forest, Oreg.	4.65	Do.
Do	F. W. Right	do	do	do	North Powder, Oreg	do	22.70	Do.
Do	R. E. Smith	do	do	do	Susanville, Oreg	Blue Mountains (E) National Forest, Oreg.	14.25	Do.

Do.	J. M. Sullins	Deputy forest supervisor.	do	do	Sumpter, Oreg	do	17.50	Do.
Do.	W. G. Weigle	Assistant chief, management.	do	do	La Grande, Oreg	Washington, D. C.	19.65	Do.
Do.	Sylvanus Wright	Forest guard	do	do	Hardman, Oreg	Heppner National Forest, Oreg.	30.00	Do.
Oct. 30	H. A. Winkenwerder.	Forest assistant	Unofficial	Lawrenceville, Ga	Jefferson, Ga	Washington, D. C.	1.36	Educational tour of Hon. Thomas M. Bell.
Do.	A. T. Boisen	do	do	Indianapolis, Ind	Defiance, Ohio	do	18.68	Address before Indiana Federation of Women's Clubs.
Do.	Enos A. Mills	Forest agent	do	Ogden, Utah	Portland, Oreg	do	47.30	Address before Utah State Federation of Women's Clubs.
Oct. 31	Thomas E. Will	Collaborator	do	Philadelphia, Pa	Washington, D. C.	do	6.00	Address at Franklin Institute.
Nov. 1	H. A. Winkenwerder.	Forest assistant	do	Toccoa, Ga	Lawrenceville, Ga	do	6.19	Educational tour of Hon. Thomas M. Bell.
Nov. 2	do	do	do	Clarkesville, Ga	Toccoa, Ga	do	2.90	Do.
Do.	J. B. Lafferty	Forest supervisor	do	White Bird, Idaho	White Bird, Idaho	Weiser National Forest, Idaho.	None.	In attendance at meeting of Idaho County Stock Association.
Nov. 3	Enos A. Mills	Forest agent	do	Salina, Kans	Ogden, Utah	Washington, D. C.	43.50	Address before board of education.
Nov. 4	H. A. Winkenwerder.	Forest assistant	do	Clayton, Ga	Clarkesville, Ga	do	6.79	Educational tour of the Hon. Thomas M. Bell.
Nov. 4,5	A. G. Pearson	do	do	Lincoln, Nebr	Lincoln, Nebr	do	None.	Address before University of Nebraska.
Nov. 5	A. S. Peck	do	do	do	do	do	None.	Address before Forestry Club, University of Nebraska.
Do.	Thos. E. Will	Collaborator	do	Madison, Wis	Washington, D. C.	do	33.25	Address before Science Club.
Do.	Chas. T. McGlone	Forest supervisor	do	Douglas, Ariz	Douglas, Ariz	Douglas, Ariz	None.	Address before Arizona Federation of Women's Clubs.
Nov. 5,9	W. A. Anderson	Forest guard	Official	Thompson Falls, Mont.	Thompson Falls, Mont.	Cabinet (S) National Forest, Mont.	4.20	Meeting of rangers and supervisors to discuss national forest business.
Do.	J. D. Buckhouse	do	do	do	Thompson, Mont	do	None.	Do.
Do.	Ralph H. Bushnell	do	do	do	do	do	None.	Do.
Do.	Roy Hadley	Acting forest supervisor.	do	do	do	do	None.	Do.
Do.	G. J. Gordon	Forest guard	do	do	Nixon, Mont	do	5.20	Do.
Do.	Chas. McCauley	do	do	do	Thompson, Mont	do	5.85	Do.
Do.	E. A. Sherman	Chief inspector	do	do	Thompson Falls, Mont.	Missoula, Mont	5.00	Do.
Do.	G. M. Van Dyk	Forest guard	do	do	Heron, Mont	Cabinet (S) National Forest, Mont.	5.90	Do.
Nov. 6	H. A. Winkenwerder.	Forest assistant	Unofficial	Cleveland, Ga	Clayton, Ga	Washington, D. C.	5.53	Educational tour of Hon. Thomas M. Bell.
Do.	Thos. E. Will	Collaborator	do	La Crosse, Wis	Madison, Wis	do	2.91	Address before board of trade.
Do.	do	do	do	Madison, Wis	do	do	None.	Address before geology classes, University of Wisconsin.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Nov. 7	H. A. Winkenwerder.	Forest assistant	Unofficial	Dahlonega, Ga	Cleveland, Ga	Washington, D. C.	$1.00	[illegible] tour of Hon. Bell.
Do	do	do	do	Dawsonville, Ga	Dahlonega, Ga	do	None.	
Do	Thos. E. Will	Collaborator	do	Wausau, Wis	La Crosse, Wis	do	7.30	[illegible]
Nov. 8	Enos A. Mills	Forest agent	do	Tifton, Ga	Salina, Kans	do	52.95	Address before State Federation of Women's Club.
Do	H. A. Winkenwerder.	Forest assistant	do	Cumming, Ga	Dawsonville, Ga	do	None.	Educational tour of Hon. Thomas M. Bell.
Nov. 9	Thos. E. Will	Collaborator	do	Grand Rapids, Wis.	Wausau, Wis	do	1.05	Address before State Federation of Women's Clubs.
Nov. 10-14	H. H. Chivington	Deputy forest ranger.	Official	Yreka, Cal	Sisson, Cal	Shasta National Forest, Cal.	14.37	Meeting of supervisors and rangers to discuss national forest business.
Nov. 10	Fred G. Plummer	Chief, section of atlas	Unofficial	Oak Grove, Cal	Oak Grove, Cal	Washington, D. C.	None.	Address before public school.
Do	H. N. Wheeler	Forest supervisor	do	North Park, Colo	Estes Park, Colo	Estes Park, Colo	40.00	In attendance at stockmen's meeting.
Nov. 10-12	S. L. N. Ellis	do	do	Sutter Creek, Cal	Sonora, Cal	Sonora, Cal	12.00	In attendance at meeting of Amador and El Dorado Stock Association.
Do	W. L. Sears	Forest ranger	do	do	do	do	8.00	Do.
Nov. 10-14	George A. Coleman	Forest supervisor	Official	Yreka, Cal	Sisson, Cal	Shasta National Forest, Cal.	6.77	Meeting of supervisors and rangers to discuss national forest business.
Do	F. P. Cunningham	Assistant forest ranger.	do	do	do	do	19.87	Do.
Do	R. F. Hammatt	Forest assistant	do	do	do	do	8.28	Do
Do	Frank Helfreich	Forest ranger	do	do	do	do	8.28	Do.
Do	William C. Hodge	Inspector	do	do	San Francisco, Cal	San Francisco, Cal	40.45	Do.
Do	L. N. Lorenzen	Assistant forest ranger.	do	do	Sisson, Cal	Shasta National Forest, Cal.	23.28	Do.
Do	W. C. Melone	Forest guard	do	do	Clayton, Cal	do	14.57	Do.
Do	C. C. Metcalf	do	do	do	Sisson, Cal	do	11.03	Do.
Do	F. E. Olmsted	Chief inspector	do	do	Yreka, Cal	San Francisco, Cal	8.50	Do
Do	J. F. Richardson	Assistant forest ranger.	do	do	Little Shasta, Cal	Shasta National Forest, Cal.	8.43	Do.
Nov. 11	Enos A. Mills	Forest agent	Unofficial	Louisville, Ky	Tifton, Ga	Washington, D. C.	28.11	Address before women's clubs
Do	A. C. Shaw	Principal examiner	do	Saginaw, Mich	Washington, D. C.	do	56.55	Address before the Michigan State Forestry Association.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Georgetown, Ga	do	do	29.05	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Eau Claire, Wis	Grand Rapids, Wis.	do	None.	Address before the board of trade.

Nov. 11-13	J. L. Ammon	Deputy forest ranger.	Official	Yreka, Cal.	Orleans	Klamath National Forest, Cal.	27.05	Meeting of supervisors and rangers to discuss national forest business.
Do	R. L. P. Bigelow	Forest supervisor	do	do	Yreka, Cal.	do	10.00	Do.
Do	Robt. Finley	Assistant forest ranger.	do	do	Sawyers Bar, Cal.	do	6.00	Do.
Do	W. Gott	Forest guard	do	do	Gottsville, Cal.	do	9.35	Do.
Do	F. W. Harley	Deputy forest range	do	do	Sawyers Bar, Cal.	do	15.65	Do.
Do	W. H. Hotelling	Assistant forest ranger.	do	do	Orleans, Cal.	do	26.25	Do.
Do	A. W. Lewis	do	do	do	Happy Camp, Cal.	do	13.65	Do.
Do	F. P. McCarthy	Deputy forest ranger.	do	do	Scott Bar, Cal.	do	16.60	Do.
Do	M. H. McCarthy	do	do	do	do	do	16.60	Do.
Do	Horace Phillips	Assistant forest ranger.	do	do	Happy Camp, Cal.	do	12.10	Do.
Do	C. J. Quigley	Deputy forest ranger.	do	do	Walker, Cal.	do	9.35	Do.
Do	E. E. Quigley	Forest guard	do	do	do	do	9.35	Do.
Do	Charles O. Willis	do	do	do	Hamburg, Cal.	do	9.10	Do.
Nov. 12	Thos. E. Will	Collaborator	Unofficial	Eau Claire, Wis.	Eau Claire, Wis.	Washington, D. C.	6.93	Address before the Eau Claire Woman's Club.
Do	Enos A. Mills	Forest agent	do	St. Louis, Mo.	Louisville, Ky.	do	15.52	Address before public schools.
Do	do	do	do	do	do	do	5.50	Address before high school.
Do	H. A. Winkenwerder.	Forest assistant	do	Alpharetta, Ga.	Cuming, Ga.	do	6.45	Educational tour of Hon. Thos. M. Bell.
Do	H. H. Chapman	Collaborator	do	Saginaw, Mich.	New Haven, Conn.	New Haven, Conn.	56.85	Address before Michigan Forestry Association.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Cuthbert, Ga.	Georgetown, Ga.	Washington, D. C.	8.04	Educational tour of Hon. J. M. Griggs.
Do	Enos A. Mills	Forest agent	do	St. Louis, Mo.	St. Louis, Mo.	do	5.00	Address before teachers' association.
Do	do	do	do	do	do	do	5.00	Address before high school.
Nov. 12, 13	A. C. Shaw	Principal examiner	do	Saginaw, Mich.	Saginaw, Mich.	do	28.50	In attendance at meeting of forestry association.
Do	C. H. Adams	Inspector of grazing	do	The Dalles, Oreg.	Portland, Oreg.	do	26.40	In attendance at meeting of ciation, by invitation. Oregon Wool Growers' Asso-
Nov. 13	Enos A. Mills	Forest agent	do	St. Louis, Mo.	St. Louis, Mo.	do	5.00	Address before Y. M. C. A.
Do	H. A. Winkenwerder.	Forest assistant	do	Canton, Ga.	Alpharetta, Ga.	do	11.75	Educational tour of Hon. Thos. M. Bell.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Fort Gaines, Ga.	Cuthbert, Ga.	do	3.42	Educational tour of Hon. J. M. Griggs.
Do	Enos A. Mills	Forest agent	do	St. Louis, Mo.	St. Louis, Mo.	do	6.65	Address before public school.
Do	Thos. E. Will	Collaborator	do	Milwaukee, Wis.	Eau Claire, Wis.	do	10.00	Address before Merchants and Manufacturers' Association.
Nov. 13-14	C. T. McGlone	Forest supervisor	do	Phoenix, Ariz.	Douglas, Ariz.	Douglas, Ariz.	25.20	In attendance at meeting of Arizona Cattle Growers' Association.
Nov. 13-15	W. C. Barnes	Inspector of grazing	do	do	Albuquerque, N. Mex.	Washington, D. C.	46.60	In attendance, by invitation, meeting of Arizona Cattle Growers' Association.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Nov. 13-15.	D. D. Bronson	Chief inspector	Unofficial	Phoenix, Ariz	Albuquerque, N. Mex.	Albuquerque, N. Mex.	$36.00	In attendance, by invitation, meeting of Arizona Cattle Growers' Association.
Do	W. H. Reed	Forest supervisor	do	do	Roosevelt, Ariz	Roosevelt, Ariz	26.50	Do.
Do	R. J. Selkirk	do	do	do	Benson, Ariz	Benson, Ariz	15.00	Do.
Do	A. O. Wahs	Inspector	do	do	Albuquerque, N. Mex.	Albuquerque, N. Mex.	37.00	In attendance meeting of Arizona Cattle Growers' Association.
Nov. 14	H. A. Winkenwerder.	Forest assistant	do	Jasper, Ga	Canton, Ga	Washington, D. C.	7.60	Educational tour of Thos. M. Bell.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Dawson, Ga	Fort Gaines, Ga	do	4.42	Educational tour of the Hon. J. M. Griggs.
Do	Enos A. Mills	Forest agent	do	St. Louis, Mo	St. Louis, Mo	do	8.00	Address before Fellowship Club.
Do	do	do	do	do	do	do	6.75	Address before Woman's Club.
Nov. 15	A. B. Recknagel	Chief, section of reconnaissance.	do	Albany, Ga	Dawson, Ga	do	4.91	Educational tour of Hon. J. M. Griggs.
Do	H. A. Winkenwerder.	Forest assistant	do	Ellijay, Ga	Jasper, Ga	do	2.61	Educational tour of Hon. Thos. M. Bell.
Do	Enos A. Mills	Forest agent	do	St. Louis, Mo	St. Louis, Mo	do	8.00	Address before public school.
Do	do	do	do	do	do	do	9.50	Do.
Do	do	do	do	do	do	do	6.65	Do.
Do	do	do	do	do	do	do	6.00	Do.
Do	Thos. E. Will	Collaborator	do	Alma, Mich	Milwaukee, Wis	do	9.92	Address before Presbyterian Church.
Do	A. C. Shaw	Principal examiner	do	Columbus, Ohio	Columbus, Ohio	do	28.05	In attendance at meeting of National Tax Conference.
Nov. 16	Enos A. Mills	do	do	St. Louis, Mo	St. Louis, Mo	do	7.00	Address before public school.
Do	do	do	do	do	do	do	6.30	Address before Young Men's Business League.
Do	do	do	do	do	do	do	7.00	Address before Smith College.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Sylvester, Ga	Albany, Ga	do	7.37	Educational tour of Hon. J. M. Griggs.
Do	H. A. Winkenwerder.	Forest assistant	do	Blue Ridge, Ga	Ellijay, Ga	do	6.17	Educational tour of Hon. Thos. M. Bell.
Nov. 17	Enos A. Mills	Forest agent	do	Boonville, Mo	St. Louis, Mo	do	12.29	Address before Civics Club.
Nov. 17-19	F. E. Olmsted	Chief inspector	Official	Elk Creek, Cal	San Francisco, Cal.	San Francisco, Cal.	23.50	Meeting of supervisors and rangers to discuss national forest business.
Nov. 18	H. A. Winkenwerder.	Forest assistant	Unofficial	Blairsville, Ga	Blue Ridge, Ga	Washington, D. C.	1.50	Educational tour of Hon. Thos. M. Bell.
Do	J. H. Bolen	Forest guard	do	Wenatchee, Wash	Wenatchee, Wash	Washington (Wenatchee Div.) National Forest, Wash.	11.25	In attendance at meeting of stockmen

Do	H. A. Winkenwerder	Forest assistant	do	Young Harris, Ga.	Blairsville, Ga.	Washington, D. C.	1.50	Educational tour of Hon. Thos. M. Bell.
Do	W. J. Ryan	Forest guard	do	Wanatchee, Wash.	Wanatchee, Wash.	Washington (Wenatchee Div.) National Forest, Wash.	10.80	In attendance at meeting of stockmen.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Newton, Ga.	Sylvester, Ga.	Washington, D. C.	9.10	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Muskegon, Mich.	Alma, Mich.	do	5.28	Address before Young People's Lecture Course.
Nov. 18-20.	Ernest Britten	Forest ranger	Official	Elk Creek, Cal.	Elk Creek, Cal.	Stony Creek National Forest, Cal.	None.	Meeting of supervisor and rangers to discuss national forest business.
Do	Frank Crawford	Assistant forest ranger.	do	do	Upper Lake, Cal.	do	18.85	Do.
Do	N. B. Drew	do	do	do	Elk Creek, Cal.	do	None.	Do.
Do	E. F. Montgomery	Clerk	do	do	do	do	None.	Do.
Do	G. E. Squires	Assistant forest ranger.	do	do	do	do	None.	Do.
Do	C. R. York	do	do	do	Hullville, Cal.	do	19.90	Do.
Nov. 18-21.	James B. Adams	Assistant forester	do	Weaverville, Cal.	Redding, Cal.	Washington, D. C.	28.65	Do.
Do	H. W. Brannan	Assistant forest ranger.	do	do	Big Bar, Cal.	Trinity National Forest, Cal.	14.00	Do.
Do	Clarence A. Chamberlain.	do	do	do	Acorn via Burnt Ranch, Cal.	do	14.00	Do.
Do	Frank A. Graham	Forest guard	do	do	Big Bar, Cal.	do	8.00	Do.
Do	F. H. Hafley	Forest supervisor	do	do	Weaverville, Cal.	do	None.	Do.
Do	W. A. Huestis	Deputy forest ranger.	do	do	do	do	None.	Do.
Do	B. R. Garrett	Assistant forest ranger.	do	do	Hyampom, Cal.	do	8.00	Do.
Do	Wm. Garrett	Deputy forest ranger.	do	do	do	do	14.00	Do.
Do	John T. Gray	Assistant forest ranger.	do	do	Ruth, Cal.	do	14.00	Do.
Do	J. W. Patton	do	do	do	Weaverville, Cal.	do	8.00	Do.
Do	John S. Reid	do	do	do	do	do	5.00	Do.
Nov. 18-23.	Grover A. Allen	do	do	Delta, Idaho	Bayview, Idaho	Coeur d'Alene National Forest, Idaho.	19.83	Do.
Do	J. E. Barton	Deputy forest supervisor.	do	do	Wallace, Idaho	do	15.78	Do.
Do	Fred E. Bice	Forest guard	do	do	Enaville, Idaho	do	15.28	Do.
Do	A. L. Campbell	do	do	do	Murray, Idaho	do	4.48	Do.
Do	R. C. Christopher	do	do	do	Enaville, Idaho	do	10.28	Do.
Do	Victor C. Coglon	do	do	do	do	do	12.88	Do.
Do	Chipman L. Crawford	Assistant forest supervisor.	do	do	Rosedale, Idaho	do	15.28	Do.
Do	Ralph M. Debitt	do	do	do	St. Joe, Idaho	do	22.03	Do.
Do	Walter U. Dell	Forest guard	do	do	Lake View, Idaho	do	29.03	Do.
Do	Alfred E. Harris	Deputy forest ranger.	do	do	Harvard, Idaho	Palouse National Forest, Idaho.	28.63	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Nov. 18-23.	Thomas E. Herrington.	Assistant forest ranger.	Official	Delta, Idaho	Delta, Idaho	Coeur d'Alene National Forest, Idaho.	$15.28	Meeting of supervisors and rangers to discuss national forest business.
Do	Frank Jackson	Forest guard	do	do	Wallace, Idaho	do	15.28	Do.
Do	George M. Kinney	Assistant forest ranger.	do	do	Kellogg, Idaho	do	15.28	Do.
Do	Henry F. Kottpey	Forest guard	do	do	Taft, Idaho	do	15.28	Do.
Do	Knox McAnnually	do	do	do	Wallace, Idaho	do	29.03	Do.
Do	Willard A. Mallery	Deputy forest ranger.	do	do	Harvard, Idaho	Palouse National Forest, Idaho.	27.73	Do.
Do	Harry Merrifield	Forest guard	Official	do	Taft, Idaho	Coeur d'Alene National Forest, Idaho.	13.78	Do.
Do	Guy L. Rogers	do	do	do	Wallace, Idaho	do	15.28	Do.
Do	R. H. Rutledge	Forest supervisor	do	do	do	do	12.28	Do.
Do	Oliver Scanlon	Forest guard	do	do	do	do	15.28	Do.
Do	Henry R. Snider	Assistant forest ranger.	do	do	Enaville, Idaho	do	14.78	Do.
Do	E. A. Sherman	Chief inspector	do	do	Missoula, Mont	Missoula, Mont	29.78	Do.
Do	Royster J. Soards	Assistant forest ranger.	do	do	Delta, Idaho	Coeur d'Alene National Forest, Idaho.	15.28	Do.
Do	J. D. Warner	Forest assistant	do	do	Wallace, Idaho	do	15.28	Do.
Do	Emery E. Wilson	Assistant forest ranger.	do	do	do	Palouse National Forest, Idaho.	10.28	Do.
Nov. 19	H. A. Winkenwerder.	Forest assistant	Unofficial	Hiawassee, Ga	Young Harris, Ga	Washington, D. C.	6.15	Educational tour of Hon. Thos. M. Bell.
Do	Thos. E. Will	Collaborator	do	Grand Rapids, Mich	Muskegon, Mich	do	7.73	Address before Ryerson Public Library.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Camilla, Ga	Newton, Ga	do	3.63	Educational tour of Hon. J. M. Griggs.
Nov. 19-22.	Will C. Barnes	Inspector of grazing	do	Muskogee, Okla	Muskogee, Okla	do	14.50	Meeting of Trans-Mississippi Congress. In attendance by direction of Forester, and as delegate from New Mexico.
Nov. 20	Gifford Pinchot	Forester	do	Philadelphia, Pa	Washington, D. C.	Washington, D. C.	None.	Address before Atlantic Waterways Commission.
Do	Enos A. Mills	Forest agent	do	Waco, Tex	Booneville, Mo	do	27.55	Address before Woman's Clubs (Texas State Federation).
Do	H. A. Winkenwerder.	Assistant forester	do	Rome, Ga	Hiawassee, Ga	do	38.19	Address before Berry School.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Blakely, Ga	Camilla, Ga	do	3.66	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Ypsilanti, Mich	Grand Rapids, Mich	do	.91	Address before Michigan State Normal College.

Do	do	do	do	Ann Arbor, Mich	Ypsilanti, Mich	do	3.73	Address before Forestry Club, University of Michigan.
Nov. 20,21	V. L Bonner	Deputy forest ranger	Official	Alturas, Cal	Alturas, Cal	Modoc and Warner Mountains national forests, Cal.	None.	Meeting of supervisors and rangers to discuss national forest business.
Do	A. F. Layton	Assistant forest ranger.	do	do	do	do	None.	Do.
Do	William J. Lunford	Forest guard	do	do	do	do	None.	Do.
Do	E. D. Payne	Deputy forest ranger.	do	do	do	do	None.	Do.
Do	James F. Poore	Assistant forest ranger.	do	do	do	do	None.	Do.
Do	C. E. Rachford	Acting forest supervisor.	do	do	do	do	None.	Do.
Nov. 21	Herbert A. Smith	Editor	Unofficial	Providence, R. I	Washington, D. C	Washington, D. C	32.22	Address before American Civic Association.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Moultrie, Ga	Blakely, Ga	do	3.60	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Jackson, Mich	Ann Arbor, Mich	do	3.96	Address before First Congregational Church.
Nov. 22	A. B. Recknagel	Chief, section of reconnaissance.	do	Tifton, Ga	Moultrie, Ga	do	1.42	Educational tour of Hon J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Detroit, Mich	Jackson, Mich	do	2.86	Address before Detroit Turnverein.
Nov. 22-25	W. W. Cryder	Forest supervisor	do	Anglin, Wash	Republic, Wash	Republic, Wash	4.70	In attendance at meeting of stockmen.
Nov. 23	A. B. Recknagel	Chief, section of reconnaissance.	do	Ashburn, Ga	Tifton, Ga	Washington, D. C	2.00	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Toledo, Ohio	Detroit, Mich	Washington, D. C	12.45	Address before Toledo High School.
Nov. 24-28	James B. Adams	Assistant forester	Official	Quincy, Cal	Weaverville, Cal	do	58.68	Meeting of rangers and supervisors to discuss national forest business.
Do	Enock Carrington	Assistant forest ranger.	do	do	Quincy, Cal	Diamond Mountain National Forest, Cal.	None.	Do.
Do	Geo. W. Chamberlain	do	do	do	Sterling City, Cal	Plumas National Forest, Cal.	16.50	Do.
Do	J. E. Cooke	Deputy forest ranger.	do	do	Quincy, Cal	Diamond Mountain National Forest, Cal.	12.00	Do.
Do	Austin E. Darby	Assistant forest ranger.	do	do	Bucks, Cal	Plumas National Forest, Cal.	4.00	Do.
Do	J. N. Dilley	Clerk	do	do	Quincy, Cal	Warner Mountains and Plumas National Forest, Cal.	None	Do.
Do	Coert Du Bois	Inspector	do	do	Weaverville, Cal	San Francisco, Cal	53.08	Do.
Do	W. G. Durbin	Assistant forest ranger.	do	do	Quincy, Cal	Warner Mountains and Plumas National Forest. Cal.	None.	Do.
Do	R. W. Flournoy	Deputy forest ranger	do	do	Beckwith, Cal	Diamond Mountain National Forest, Cal.	15.25	Do.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Nov. 24-28.	Geo. A. Hall	Deputy forest ranger.	Official	Quincy, Cal	Crescent Mills, Cal.	Plumas National Forest, Cal.	$11.50	Meeting of rangers and supervisors to discuss national forest business.
Do	L. A. H. Kling	Deputy supervisor	do	do	Quincy, Cal	Diamond Mountain National Forest, Cal.	None.	Do.
Do	Joseph C. La Plant	Forest ranger	do	do	Susanville, Cal	Lassen Peak National Forest, Cal.	13.50	Do.
Do	Frank L. Mead	Assistant forest ranger.	do	do	Quincy, Cal	Diamond Mountain National Forest, Cal.	12.00	Do.
Do	F. E. Olmsted	Chief inspector	do	do	San Francisco, Cal.	San Francisco, Cal.	49.68	Do.
Do	Adelbert E. Patton	Assistant forest ranger.	do	do	Quincy, Cal	Diamond Mountain National Forest, Cal.	12.00	Do.
Do	Ernest D. Payne	Deputy forest ranger.	do	do	Alturas, Cal	Warner Mountains and Plumas National Forest, Cal.	43.80	Do.
Do	James F. Poore	Assistant forest ranger.	do	do	do	Modoc National Forest, Cal.	50.00	Do.
Do	C. E. Rachford	Forest ranger	do	do	do	do	50.00	Do.
Do	Walter C. Robinson	Deputy forest ranger.	do	do	Meadow Valley, Cal.	Plumas National Forest, Cal.	11.50	Do.
Do	Franklin H. Smith	Assistant forest ranger.	do	do	Quincy, Cal	do	12.00	Do.
Do	W. T. Stark	do	do	do	do	Diamond Mountain National Forest, Cal.	12.00	Do.
Nov. 25	A. B. Recknagel	Chief, section of reconnaissance.	Unofficial	Nashville, Ga	Ashburn, Ga	Washington, D. C.	13.97	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	Kalamazoo, Mich.	Toledo, Ohio	do	11.74	Address before Western Michigan State Normal School.
Nov. 26	Enos A. Mills	Forest agent	do	Salt Lake City, Utah	Waco, Tex	do	90.55	Address before State Federation of Women's Clubs.
Do	Gifford Pinchot	Forester	do	Baltimore, Md	Washington, D. C.	do	None.	Address before National Drainage Congress.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Thomasville, Ga	Nashville, Ga	do	4.87	Educational tour of Hon. J. M. Griggs.
Do	Thos. E. Will	Collaborator	do	East Lansing, Mich.	Kalamazoo, Mich.	do	2.80	Address before Michigan Agricultural College.
Nov. 26-27.	Charles H. Anderson	Deputy forest ranger.	Official	Cody, Wyo	Four Bear, Wyo.	Yellowstone (Shoshone), Pryor Mountains National Forest.	7.00	Meeting of rangers and supervisors to discuss national forest business.
Do	Edward H. Heavey	Forest ranger	do	do	Sunshine, Wyo.	do	7.00	Do.

Do	W. E. Herring	Chief of engineering	do	do	Cody, Wyo	Washington, D. C.	None.	Do.
Do	Shepard Hiscox	Assistant forest ranger.	do	do	Painter, Wyo	Yellowstone (Shoshone), Pryor Mountains National Forest.	7.00	Do.
Do	V. Gifford Lantry, jr.	do	do	do	Bowler, Mont	do	7.00	Do.
Do	E. E. Mortmore	Deputy forest ranger.	do	do	do	do	7.00	Do.
Do	Charles G. Poole	do	do	do	Wapiti, Wyo	do	7.00	Do.
Do	Paul G. Redington	Inspector	do	do	Missoula, Mont	Missoula, Mont	39.00	Do.
Do	J. K. Rollinson	Assistant forest ranger.	do	do	Painter, Wyo	Yellowstone (Shoshone), Pryor Mountains National Forest.	7.00	Do.
Do	John H. Ruff	Forest ranger	do	do	Ishawooa, Wyo	do	7.00	Do.
Do	Frank O. Sparhawk	Deputy forest ranger.	do	do	Cody, Wyo	do	7.00	Do.
Do	C. B. Swim	Forest ranger	do	do	do	do	7.00	Do.
Do	H. N. Thurston	Forest supervisor	do	do	do	do	None.	Do.
Do	C. N. Whitney	Forest assistant	do	do	do	do	None.	Do.
Nov. 27	A. B. Recknagel	Chief, section of reconnaissance.	Unofficial	Cairo, Ga	Thomasville, Ga	Washington, D. C.	2.05	Educational tour of Hon. J. M. Griggs.
Do	do	do	do	Wigham, Ga	Cairo, Ga	do	.85	Do.
Do	Thos. E. Will	Collaborator	do	Bay City, Mich	East Lansing, Mich.	do	6.31	Address before Woman's Club.
Nov. 28	Enos A. Mills	Forest agent	do	Boise, Idaho	Salt Lake City, Utah	do	18.20	Address before board of education.
Do	do	do	do	Boise, Idaho	Boise, Idaho	do	16.90	Address before Boise Woman's Club.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Bainbridge, Ga	Wigham, Ga	do	.30	Educational tour of Hon. J. M. Griggs.
Nov. 28-30	Fred B. Ainger	Deputy forest ranger.	Official	Cold Spring Ranch, West Gallatin River, Mont.	Bozeman, Mont	Gallatin National Forest, Mont.	7.60	Meeting of supervisors and rangers to discuss national forest business.
Do	H. A. Cleaveland	do	do	do	do	do	3.75	Do.
Do	David T. Conkling	Forest supervisor	do	do	Bozeman, Mont	do	8.55	Do.
Do	Rhesis Fransham	Assistant forest ranger.	do	do	do	do	6.60	Do.
Do	Albert S. Hapner	do	do	do	Salesville, Mont	do	6.60	Do.
Do	Ralph V. Harr	Forest guard	do	do	Fridley, Mont	do	3.75	Do.
Do	Samuel R. Hayes	Deputy forest ranger.	do	do	Bozeman, Mont	do	3.75	Do.
Do	Charles M. Ralley	Assistant forest ranger.	do	do	Chimney Rock, Mont.	do	6.15	Do.
Do	P. G. Redington	Inspector	do	do	Missoula, Mont	Missoula, Mont	24.00	Do.
Do	George Siebentritt	Assistant forest ranger.	do	do	Miner, Mont	Gallatin National Forest, Mont.	6.15	Do.
Do	Ernest Wethern	Forest guard	do	do	Jeffers, Mont	do	6.60	Do.
Nov. 29	A. B. Recknagel	Chief, section of reconnaissance.	Unofficial	Colquitt, Ga	Bainbridge, Ga	Washington, D. C.	8.25	Educational tour of Hon. J. M. Griggs.
Do	R. S. Kellogg	Chief, Office of Wood Utilization.	do	Atlanta, Ga	Washington, D. C.	do	50.55	Address before Atlanta Section of American Institute of Electrical Engineers.
Do	A. B. Recknagel	Chief, section of reconnaissance.	do	Edison, Ga	Colquitt, Ga	do	26.19	Educational tour of Hon. J. M. Griggs.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907. Nov. 29	Thomas E. Will	Collaborator	Unofficial	Paducah, Ky	Bay City, Mich	Washington, D. C.	$26.24	Address before Ken[illegible] Forestry Association [illegible] department of [illegible] Club.
Dec. 1	Enos A. Mills	Forest agent	do	Spokane, Wash	Boise, Idaho	do	21.45	Address under auspices State Federation of Women's Clubs.
Do	Do	do	do	do	Spokane, Wash	do	7.50	Address before high school.
Dec. 1-5	Wm. C. Hodge	Inspector	do	Nevada City, Cal	Nevada City, Cal	San Francisco, Cal	22.00	Meeting of rangers to discuss national forest business.
Dec. 2	Thomas E. Will	Collaborator	Unofficial	Columbus, Ohio	Paducah, Ky	Washington, D. C.	14.85	Address before board of trade.
Dec. 2-4	Norton L. Almon	Forest ranger	Official	French Gulch, Mont.	Bearmouth, Mont	Hell Gate National Forest, Mont.	15.50	Meeting of supervisors and rangers to discuss national forest business.
Do	W. S. Barton	Assistant forest ranger.	do	Nevada City, Cal	Downieville, Cal	Tahoe National Forest, Cal.	13.25	Do.
Do	F. B. Clark	do	do	do	Nevada City, Cal	do	5.25	Do.
Do	C. A. Copren	do	do	do	do	do	5.25	Do.
Do	Herbert Graff	Forest guard	do	French Gulch, Mont.	French Gulch, Mont.	Hell Gate National Forest, Mont.	None.	Do.
Do	C. C. Hall	Forest supervisor	do	do	Anaconda, Mont	do	4.30	Do.
Do	Fred. E. Hughes	Forest guard	do	do	do	do	11.40	Do.
Do	George W. James	do	do	do	French Gulch, Mont.	do	None.	Do.
Do	Charles Jarvis	do	do	do	Cable, Mont	do	9.75	Do.
Do	E. E. Jones	Forest ranger	do	Nevada City, Cal	Nevada City, Cal	Tahoe National Forest, Cal.	17.25	Do.
Do	E. W. Kelley	do	do	do	do	do	7.00	Do.
Do	P. S. Lovejoy	Assistant forest ranger.	do	French Gulch, Mont.	Anaconda, Mont	Hell Gate National Forest, Mont.	None.	Do.
Do	A. A. Merrill	Deputy forest ranger.	do	Nevada City, Cal	North Bloomfield, Cal.	Tahoe National Forest, Cal.	6.75	Do.
Do	Harry N. Morgan	Forest ranger	do	French Gulch, Mont.	Philipsburg, Mont	Hell Gate National Forest, Mont.	10.80	Do.
Do	George A. Norton	Assistant forest ranger.	do	do	Cable, Mont	do	7.50	Do.
Do	J. W. Pingree	Forest guard	do	Nevada City, Cal	Nevada City, Cal	Tahoe National Forest, Cal.	2.25	Do.
Do	George F. Ranney	Assistant forest ranger.	do	French Gulch, Mont.	Anaconda, Mont	Hell Gate National Forest, Mont.	5.90	Do.
Do	Harry C. Schick	do	do	do	Divide, Mont	do	11.65	Do.
Do	E. A. Sherman	Chief inspector	do	do	Missoula, Mont	Missoula, Mont	18.00	Do.
Do	J. S. Sivertson	Assistant forest ranger.	do	Nevada City, Cal	Nevada City, Cal	Tahoe National Forest, Cal.	4.25	Do.

Do	Foster G. Smith	Forest ranger	do	French Gulch, Mont.	Gold Creek, Mont	Hell Gate National Forest, Mont.	16.35	Do.
Do	J. W. Steele	Forest guard	do	do	Anaconda, Mont	do	8.40	Do.
Do	James Stout	Assistant forest ranger.	do	Nevada City, Cal	Nevada City, Cal	Tahoe National Forest, Cal.	3.75	Do.
Do	A. H. Walton	do	do	do	do	do	8.25	Do.
Dec. 3	Thomas E. Will	Collaborator	Unofficial	Parkersburg, W. Va.	Columbus, Ohio	Washington, D. C.	22.20	Address before chamber of commerce.
Do	Enos A. Mills	Forest agent	do	Missoula, Mont	Spokane, Wash	do	17.90	Address before State university.
Do	do	do	do	do	Missoula, Mont	do	5.00	Address before Woman's Club.
Dec. 3-5	William Antonini	Deputy forest ranger.	Official	Nevada City, Cal	Groveland, Cal	Stanislaus National Forest, Cal.	22.20	Meeting of supervisors and rangers to discuss national forest business.
Do	R. W. Ayres	Forest assistant	do	do	Sonora, Cal	do	27.80	Do.
Do	Charles J. Callahan	Assistant forest ranger.	do	do	Stockton, Cal	do	22.20	Do.
Do	Stuart J. Flintham	Inspector and acting forest supervisor.	do	do	Sonora, Cal	do	29.00	Do.
Do	Paderson Y. Lewis	Deputy forest ranger.	do	do	do	do	22.20	Do.
Do	George Miller	Assistant forest ranger.	do	do	do	do	26.20	Do.
Do	Johr B. Pestoni	do	do	do	Stockton, Cal	do	21.20	Do.
Do	W. J. Rushing	Deputy forest ranger.	do	do	Groveland, Cal	do	21.30	Do.
Do	Willard L. Sears	do	do	do	Sonora, Cal	do	23.20	Do.
Do	Thomas C. West	do	do	do	do	do	43.10	Do.
Dec. 4	Charles A. Scott	Forest supervisor	Unofficial	Ida Grove, Iowa	Halsey, Nebr	Halsey, Nebr	9.29	Address before Northwestern Iowa Horticultural Society.
Do	Gifford Pinchot	Forester	do	Washington, D. C.	Washington, D. C.	Washington, D. C.	None.	Meeting of rivers and harbors congress.
Do	W. C. Clos	Inspector of grazing	do	Chicago, Ill	Chicago, Ill	do	3.10	In attendance at meeting of American Rambouillet Sheep-breeders' Association, by invitation.
Dec. 5	Charles A. Scott	Forest supervisor	do	Council Bluffs, Iowa.	Ida Grove, Iowa	Halsey, Nebr	9.62	Address before Southwestern Iowa Horticultural Society.
Do	Enos A. Mills	Forest agent	do	Great Falls, Mont	Missoula, Mont	Washington, D. C.	14.95	Address before public meeting under auspices State Federation of Women's Clubs.
Do	do	do	do	do	Great Falls, Mont	do	7.95	Address before high school.
Dec. 7	H. P. Baker	Collaborator	do	Council Bluffs, Iowa	Ames, Iowa	Ames, Iowa	None.	Address before Western Iowa Horticultural Society.
Do	Enos A. Mills	Forest agent	do	Fargo, N. Dak	Great Falls, Mont	Washington, D. C.	40.00	Address before State Agricultural College.
Dec. 8	do	do	do	do	Fargo, N. Dak	do	6.00	Address before Economic Society.
Dec. 9	do	do	do	Grand Forks, N. Dak.	do	do	7.95	Address before State University.
Do	Thos. E. Chidsey	Forest supervisor	do	Lone Rock, Oreg	Heppner, Oreg	Heppner National Forest.	5.00	In attendance at meeting of stockmen.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Dec. 9	Frank H. Wright	Deputy forest ranger.	Unofficial	Lone Rock, Oreg.	Heppner, Oreg.	Heppner National Forest.	$3.85	In attendance at meeting of stockmen.
Dec. 10	Enos A. Mills	Forest agent	do	Grand Forks, N. Dak.	Grand Forks, N. Dak.	Washington, D. C.	11.25	Address before high school.
Do	J. W. Nelson	Forest supervisor	do	Rawlins, Wyo.	Saratoga, Wyo.	Saratoga, Wyo.	6.45	In attendance at meeting of Carbon County Wool Growers' Association.
Do	M. B. Elliott	do	do	Marysville, Cal.	Nevada City, Cal.	Nevada City, Cal.	9.75	In attendance at stockmen's meeting.
Dec. 11	Enos A. Mills	Forest agent	do	Whapeton, N. Dak.	Grand Forks, N. Dak.	Washington, D. C.	6.75	Public address under auspices of women's clubs.
Do	S. J. Flintham	Forest supervisor	do	San Andreas, Cal.	Sonora, Cal.	Sonora, Cal.	6.00	In attendance at meeting of Calaneras Alpine Stock Association.
Do	Frank H. Wright	Forest guard	do	Spray, Oreg.	Heppner, Oreg.	Heppner National Forest.	4.50	In attendance at meeting of stockmen.
Do	Thos. S. Chidsey	Forest supervisor	do	do	do	do	4.50	Do.
Do	W. L. Sears	Forest ranger	do	San Andreas, Cal.	Sonora, Cal.	Sonora, Cal.	6.00	In attendance at meeting of Calaneras Alpine Stock Association.
Do	Bert Lewis	do	do	do	do	do	4.00	Do.
Dec. 12	Enos A. Mills	Forest agent	do	Moorehead, Minn.	Wahpeton, N. Dak.	Washington, D. C.	6.55	Address before State Normal School.
Do	Gifford Pinchot	Forester	do	New York City	Washington, D. C.	do	10.00	Address before National Paper Trade Association.
Do	Enos A. Mills	Forest agent	do	St. Paul, Minn.	St. Cloud, Minn.	do	9.50	Address before high school.
Dec. 13	Frank H. Wright	Forest guard	do	Monument, Oreg.	Heppner, Oreg.	Heppner National Forest.	3.85	In attendance at meeting of stockmen.
Do	Thos. S. Chidsey	Forest supervisor	do	do	do	do	3.85	Do.
Do	Enos. A. Mills	Forest agent	do	St. Cloud, Minn.	Moorehead, Minn.	Washington, D. C.	6.50	Address before public meeting under auspices of Minnesota State Federation of Women's Clubs.
Do	do	do	do	St. Anthony Park, Minn.	St. Paul, Minn.	do	19.10	Address before State Agricultural College.
Dec. 14	H. H. French	Forest supervisor	do	Basalt, Colo.	Glenwood Springs, Colo.	Glenwood Springs, Colo.	2.90	In attendance at meeting of stockmen.
Do	E. Ballard	Forest ranger	do	Mountain Home, Idaho.	Soldier, Idaho	Soldier, Idaho	17.10	Meeting of stockmen and forest officers.
Do	O. E. Blair	do	do	do	Boise, Idaho	Boise, Idaho	10.50	Do.
Do	O. M. Butler	Deputy forest supervisor.	do	do	Mountain Home, Idaho.	do	3.00	Do.
Do	Emil Grandjean	Forest supervisor	do	do	Boise, Idaho	do	7.60	Do.

Do	E. C. Hinst	Forest ranger	do	do	Soldier, Idaho	Soldier, Idaho	10.00	Do.
Do	O. K. Hjort	do	do	do	Boise, Idaho	Boise, Idaho	11.85	Do.
Do	William McCoy	do	do	do	Atlanta, Idaho	Atlanta, Idaho	26.00	Do.
Do	H. G. McPheters	do	do	do	Hailey, Idaho	Hailey, Idaho	10.00	Do.
Dec. 15	Thos. S. Chidsey	Forest supervisor	do	Hardman, Oreg	Heppner, Oreg	Heppner National Forest.	1.75	In attendance at meeting of stockmen.
Dec. 16	O. E. Blair	Forest ranger	do	Shoshone, Idaho	Mountain Home, Idaho.	Boise, Idaho	9.00	Meeting of stockmen and forest officers.
Do	O. M. Butler	Deputy forest supervisor.	do	do	Shoshone, Idaho	do	2.00	Do.
Do	E. Grandjean	Forest supervisor	do	do	Mountain Home, Idaho.	do	11.00	Do.
Do	William McCoy	Forest ranger	do	do	do	Atlanta, Idaho	20.90	Do.
Do	H. G. McPheters	do	do	do	do	Hailey, Idaho	5.00	Do.
Do	Enos A. Mills	Forest agent	do	Minneapolis, Minn	St. Paul, Minn	Washington, D. C	8.40	Address before high school.
Do	Robert E. Marshall	Forest guard	Official	Austin, Nev	Austin, Nev	Toiyabe National Forest, Nev.	15.00	Meeting of rangers and stockmen to discuss national forest business.
Do	George B. Hiskey	do	do	do	Berlin, Nev	Monitor National Forest, Nev.	13.00	Do.
Do	Royal F. Mathias	do	do	do	Round Mountain, Nev.	Toiyabe National Forest, Nev.	15.00	Do.
Dec. 17	Enos A. Mills	Forest agent	Unofficial	Minneapolis, Minn	Minneapolis, Minn	Washington, D. C	6.60	Address before high school.
Dec. 18	do	do	do	St. Paul, Minn	do	do	7.00	Do.
Do	C. P. Gage	Assistant forest ranger.	Official	Sacramento, N. Mex.	Alamogordo, N. Mex.	Sacramento National Forest, N. Mex.	3.00	Rangers' meeting for discussion of national forest business.
Do	D. D. Harkness	do	do	do	Tularosa, N. Mex	do	4.50	Do.
Do	Wm. P. Johnson	do	do	do	Elk, N. Mex	do	3.50	Do.
Do	T. B. Longwell	do	do	do	Cloudcroft, N. Mex	do	4.50	Do.
Do	J. G. Shultz	do	do	do	Pinon, N. Mex	do	3.00	Do.
Do	J. A. Simmons	do	do	do	Weed, N. Mex	do	3.00	Do.
Do	A. Avie	Forest ranger	Unofficial	Hailey, Idaho	Carey, Idaho	Carey, Idaho	7.50	Stockmen's meeting.
Do	O. M. Butler	Deputy forest supervisor.	do	do	Shoshone, Idaho	Boise, Idaho	12.50	Do.
Do	E. Grandjean	Forest supervisor	do	do	do	do	15.35	Do.
Do	R. Ivie	Forest ranger	do	do	Carey, Idaho	Carey, Idaho	7.50	Do.
Do	H. G. McPheters	do	do	do	Shoshone, Idaho	Hailey, Idaho	3.80	Do.
Do	W. J. Morrill	Inspector	do	Del Norte, Colo	Del Norte, Colo	Denver, Colo	4.00	Meeting of Rio Grande Stock Growers' Association.
Do	Frank C. Spencer	Forest supervisor	do	do	Monte Vista, Colo	Monte Vista, Colo	4.00	Do.
Dec. 18-21	C. H. Shinn	Forest supervisor	do	Fresno, Cal	North Fork, Cal	North Fork, Cal	16.30	In attendance at meeting of shakemakers.
Dec. 19	J. H. Foster	Forest assistant	do	E. St. Louis, Mo	Magnolia, Miss	Washington, D. C	17.75	Address before public schools.
Do	Enos A. Mills	Forest agent	do	St. Paul, Minn	St. Paul, Minn	do	6.75	Address before high school.
Dec. 20	J. H. Foster	Forest assistant	do	E. St. Louis, Mo	E. St. Louis, Mo	do	12.60	Address before public schools.
Do	Enos A. Mills	Forest agent	do	St. Paul, Minn	St. Paul, Minn	do	7.60	Address before high school.
Do	H. Ireland	Forest supervisor	do	Baker City, Oreg	Sumpter, Oreg	Sumpter, Oreg	8.00	In attendance at meeting of Baker County Wool Growers' Association.
Dec. 22	J. Adamson	Forest ranger	do	Payette, Idaho	Meadows, Idaho	Meadows, Idaho	20.65	Stock meeting.

Statement of attendance of members of the forest service at meetings and conventions during the year 1907—Continued.

Date of meeting.	Name.	Official designation.	Character of meeting.	Place of meeting.	Starting point.	Place of employment.	Expense.	Remarks.
1907.								
Dec. 22	O. M. Butler	Deputy forest supervisor.	Unofficial	Payette, Idaho	Boise, Idaho	Boise, Idaho	$4.00	Stock meeting.
Do	E. Grandjean	Forest supervisor	do	do	do	do	14.50	Meeting of stockmen.
Do	Frank Hedrick	Forest ranger	do	do	do	do	7.50	Stock meeting.
Do	D. H. Kerby	do	do	do	Meadows, Idaho	Meadows, Idaho	26.45	Do.
Do	D. H. McCall	do	do	do	Alpha, Idaho	Alpha, Idaho	27.10	Do.
Dec. 23	Enos A. Mills	Forest agent	do	St. Paul, Minn.	St. Paul, Minn.	Washington, D. C.	43.25	Address before high school.
Dec. 26-31	Wm. T. Andrews	Assistant lumberman.	Official	Bernice, Mont	Bernice, Mont	Helena National Forest, Mont.	3.00	Meeting of supervisors and rangers to discuss national forest business.
Do	Emmet D. Baker	Forest guard	do	Bernice, Mont	Josephine, Mont	Big Belt and Elkhorn National Forests, Mont.	9.80	Do.
Do	Abel C. Berglund	Forest ranger	do	do	Bozeman, Mont	do	10.00	Do.
Do	Adolph J. Bucher	Deputy forest ranger.	do	do	Townsend, Mont	do	5.95	Do.
Do	Dwight Bushnell	Forest supervisor	do	do	Helena, Mont	Helena National Forest, Mont.	6.55	Do.
Do	Howard C. Bushnell	Assistant forest ranger.	do	do	do	do	3.00	Do.
Do	Albert E. Cole	do	do	do	Marysville, Mont	do	5.00	Do.
Do	Wm. T. Cox	Assistant forester	do	do	Bernice, Mont	Washington, D. C.	3.00	Do.
Do	Walter J. Derrick	Deputy forest ranger.	do	do	Racetrack, Mont	Helena National Forest, Mont.	5.40	Do.
Do	Clarence George	do	do	do	Sedan, Mont	Big Belt and Elkhorn National Forests, Mont.	27.60	Do.
Do	David Gordon	Forest guard	do	do	Townsend, Mont	do	5.90	Do.
Do	Lewis C. Holt	do	do	do	Elliston, Mont	Helena National Forest, Mont.	3.75	Do.
Do	G. M. Homans	Assistant chief, timber sales.	do	do	Bernice, Mont	Washington, D. C.	3.00	Do.
Do	Isador Kiermeyer	Forest guard	do	do	Homestake, Mont	Helena National Forest, Mont.	5.20	Do.
Do	K. R. McGuffey	Forest assistant	do	do	Bernice, Mont	do	3.75	Do.
Do	Lea Marston	Deputy forest ranger.	do	do	Sixteen, Mont	Big Belt and Elkhorn National Forests, Mont.	10.00	Do.
Do	D. W. Maryott	do	do	do	Townsend, Mont	do	9.15	Do.
Do	Harvey H. Mills	Assistant forest ranger.	do	do	Basin, Mont	Helena National Forest, Mont.	3.00	Do.
Do	Lewis T. Morgan	do	do	do	Boulder, Mont	Big Belt and Elkhorn National Forests, Mont.	2.70	Do.

Do.	Ernest Page	Forest guard	do	do	Bernice, Mont	Helena National Forest, Mont.	3.00	Do.
Do.	Hamilton Richardson.	Assistant forest ranger.	do	do	Canton, Mont	Big Belt and Elkhorn National Forests, Mont.	5.90	Do.
Do.	C. A. Schott	Forest supervisor	do	do	Bernice, Mont	Helena National Forest, Mont.	3.75	Do.
Do.	Elmore W. Searcy	Forest ranger	do	do	South Butte, Mont.	do	4.60	Do.
Do.	E. A. Sherman	Chief inspector	do	do	Bernice, Mont	Missoula, Mont	3.00	Do.
Do.	George Sinclair	Forest guard	do	do	Basin, Mont	Helena National Forest, Mont.	3.75	Do.
Do.	Arthur N. Smith	do	do	do	Radersburg, Mont.	Big Belt and Elkhorn National Forests, Mont.	9.90	Do.
Do.	Mallory M. Stickney.	Forest assistant	do	do	Bernice, Mont	Helena National Forest, Mont.	3.00	Do.
Do.	F. C. Stuart	Assistant forest ranger.	do	do	Townsend, Mont	Big Belt and Elkhorn National Forests, Mont.	9.90	Do.
Do.	R. W. Stuart	Forest supervisor	do	do	do	do	15.00	Do.
Do.	B. Thompson	Assistant forest ranger.	do	do	Bozeman, Mont	do	5.90	Do.
Do.	Charles C. Thompson	Deputy forest ranger	do	do	Watson, Mont	do	13.15	Do.
Do.	Earl V. Welton	Assistant forest ranger.	do	do	Racetrack, Mont	Helena National Forest, Mont.	5.40	Do.
Dec. 30	H. N. Wheeler	Forest supervisor	Unofficial.	Berthoud, Colo	Estes Park, Colo	Estes Park, Colo	7.00	In attendance at meeting of Berthoud Board of Trade.
Dec. 26-31	Lorenzo D. Williams.	Assistant forest ranger.	Official	Bernice, Mont	Basin, Mont	Helena National Forest, Mont.	3.75	Meeting of supervisors and rangers to discuss national forest business.
Dec. 28	H. H. French	Forest supervisor	Unofficial.	Aspern, Colo	Glenwood Springs, Colo.	Glenwood Springs, Colo.	4.70	In attendance at meeting of stockmen.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 486.

OSCAR W. REID *v.* UNITED STATES.

Mr. BORAH presented the following

OPINION RENDERED BY MR. JUSTICE HOUGH, IN THE CASE OF OSCAR W. REID, PETITIONER, v. THE UNITED STATES.

MAY 16, 1908.—Ordered to be printed.

District court of the United States, southern district of New York, Oscar W. Reid, petitioner, *v.* United States. Upon demurrer to answer, in action under the Tucker Act (of March 3, 1887, 24 Stat., 505).

On July 18, 1904, the petitioner enlisted as a soldier in the Army of the United States and took oath to serve as such soldier "for the period of three years unless sooner discharged by proper authority."

This enlistment oath, together with Reid's application to enlist and the record of his physical examination, constitute his enlistment papers, which embody whatever contract was made between him and the United States in respect of his engagement as a soldier.

He was assigned to the Twenty-fifth Infantry, and on August 13, 1906, was stationed, with a battalion of his regiment, at Fort Brown, which is in or contiguous to Brownsville, Tex.

During the night of August 13-14 certain persons repeatedly discharged firearms in the streets of Brownsville. The firing was apparently at random, but resulted in the killing of one man and the wounding of several others. It was the general, if not the universal, belief of the citizens of Brownsville that this murderous riot was perpetrated by certain soldiers of the Twenty-fifth. The disturbance was first investigated by an inspector-general, under orders from The Military Secretary, and later upon the President's own order by the Inspector-General of the Army. This officer reported that in his opinion it had been established by careful investigation that the random firing aforesaid had been done by unidentified enlisted men of the Twenty-fifth Infantry belonging to the garrison of Fort Brown. He further reported that the enlisted men of that command had failed to tell all it was reasonable to believe they knew concerning the riot, and concluded that "they (said enlisted men) appeared to stand together in a determination to resist the detection of the guilty." Upon the submission and approval of this report an order was issued by the President's direction on November 9, 1906, requiring the discharge without

honor of practically all the enlisted men comprising the garrison of Fort Brown.

The men so discharged were by said order debarred from reenlisting in the Army or Navy, but they were granted travel pay and by a subsequent order of December 12, 1906, reenlistment applications were permitted if made in writing accompanied by evidence that the applicant had not been implicated in the riot aforesaid nor withheld any evidence that might lead to the discovery of the perpetrators thereof. Such applications, however, were to be submitted to the War Department for consideration and investigation before action could be taken by recruiting officers.

Reid having received his discharge under these circumstances, brings this petition to recover the pay and emoluments which would have accrued to him from the date of such discharge to the expiration of his three-year term of enlistment, and inasmuch as he brings suit under the Tucker Act it is necessarily implied that claim is asserted upon a "contract expressed or implied with the Government of the United States, or for damages * * * in a case not sounding in tort in respect of which * * * he would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable."

A separate defense contained in the answer sets forth at length the documents supporting the statement hereinabove made, and avers that the "order of the President and the said discharge (of Reid) were not made as punishment of the petitioner or of others, but for the good of the service and for the maintenance of the morals of the Army." To this defense there is a general demurrer.

Mellen & Woodbridge for petitioner.

Henry L. Stimson, United States attorney, opposed.

HOUGH, D. J.

Several matters discussed at bar must be laid aside as immaterial to the disposition of this cause.

Whether Reid or his comrades, or any of them, were guilty of the riotous disturbance in question; or whether Reid personally committed any infraction of good order or military discipline; or whether he is in fact a desirable soldier, or knew or withheld anything tending toward the discovery of the perpetrators of the Brownsville riot; or whether, so far as Reid or others are concerned, the President's action was unnecessarily severe, cruel, or unjust, are questions beyond this judicial investigation.

The material inquiries seem to me very few. The nature of a soldier's contract of enlistment has been sufficiently treated *In re Grimley* (137 U. S., 147). By his contract Reid assumed the burden of military service not for a definite time but for three years, "unless sooner discharged by proper authority."

Nothing is expressed in the enlistment papers as to what reasons shall be sufficient for early discharge. And if the engagement be treated merely as a civil contract of hire, the Government would be entitled to dispense with Reid's services under it at any time, provided the authority—i. e., the officer directing discharge or dismissal—be "proper."

In other words, if enlistment be no more than a hiring by civil contract, under this particular contract the corporate master may

discharge the servant whenever he pleases and for or without cause, provided only the officer directing discharge be "proper authority."

I do not give assent to the assertion that a soldier's engagement is or bears much resemblance to a civil contract of hire; but on the assumption (most favorable to petitioner) that it is such a contract, it is on the part of the Government a general contract, terminable at will, if that will be expressed through a proper officer. (Martin *v.* New York Life Ins. Co., 148 N. Y., 118.)

This petitioner was, so far as formalities attending his severance from the service are concerned, properly discharged; that is, his discharge paper was correct in form and signature, and so much is not denied. But the "authority" causing and directing his discharge was the President of the United States, who personally gave the order therefor; so that the final question upon assumptions very favorable to petitioner is whether the President, as Commander in Chief of the Army, is "proper authority" to terminate in invitum a soldier's enlistment?

This question must be answered affirmatively if either (1) there be inherent constitutional authority in the President, as Commander in Chief, so to do, or (2) there be such authority in the absence of Congressional statutory action limiting, defining, or regulating the Commander's powers, or if (3) in this case the President acted in accordance with the various acts of Congress regulating the Army and discharges therefrom.

As to the first and second of these last queries, no opinion is expressed, because the last question must, in my judgment, be answered unfavorably to the petitioner.

The articles of war constitute the only statutory declaration concerning discharges from the military service (U. S. Rev. Stat., sec. 1342).

Article 4 provides:

> * * * no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial;

and this language has remained unchanged in the statutes since 1806.

I am quite unable to preceive how the President's right to terminate a soldier's engagement could be more explicitly recognized, and indeed conferred, if recognition seems to imply some antecedent right.

This fourth article of war clearly assumes that discharges must be granted before expiration of service; the power to grant them implies the power to impose them, unless a soldier have some rights inherent in his contract or inferable from the nature of his occupation.

This petitioner's contract is civilly but a hiring at the will of the employer, while the nature of his occupation, so far from varying that status, has been frequently so judicially defined as to leave no doubt of Congressional intent.

The recruit is bound to serve during the full term of his enlistment, but * * * the Government is not bound to continue him in service for a single day, but may dismiss him at the very first moment or at any subsequent period whether with or without cause for so doing. (United States *v.* Cottingham, 1 Rob, Va., at 629.)

The civil compact usually requires for its dissolution the mutual consent of the parties, but "the military compact may be dissolved at any moment by the supreme authority of the Government." (U. S. *v.*

Blakeney, 3 Grat (Va.) at 391; cited Re Morrissey, 137 U. S., at 159.) And this historical view of the soldier's relation to the Government or the Crown antedates the founding of this nation and is the accepted doctrine of the British military establishment, upon which ours was modeled. (Re Tuffnell L. R., 3 Ch. Div., 173.)

Even if, therefore, there be no inherent power of control over the military forces of the nation vested in its constitutional Commander in Chief, and even if also there be no grant of power contained in that title in the absence of Congressional gift thereof (concerning which no opinion is expressed only because I do not find the discussion necessary for this case), the statutory grant contained in the fourth article of war must be interpreted in the light of military practices, customs, and procedure well known and judicially recognized long before the date of the Revised Statutes, and indeed long before the adoption of our earliest articles of war in 1806, and by those customs so recognized and approved by Congress, the soldier's engagement was but at the will of the Government which he served, and that Government, by authority of Congress, speaks through (for the purposes of this case) the President of the United States.

It is, however, further asserted that some infraction of law was wrought by forcing upon Reid a "discharge without honor." The phrase is not known to the statutes; it is found only in the army regulations which are from time to time promulgated by the Secretary of War, but do not bind either the Secretary that makes them and much less the Commander in Chief (Smith *v.* U. S., 24 C. Cls., 209). The exact method of this soldier's discharge and the quantum or kind of character that should be given him not being regulated by statute, must necessarily be left in the discretion of the executive officer having power to grant some kind of discharge. That it is beyond the power of the judicial branch to coerce or review the discretion of the executive is familiar doctrine, while that a discharge with a very bad character is not a punishment to the man discharged within the meaning of any Federal statute is settled by U. S. *v.* Kingsley (138 U. S., 87).

The demurrer is overruled, and as that portion of the answer demurred to presents, in my judgment, a complete defense to the petition, final judgment is directed in favor of the Government and against the petitioner, with costs to be taxed.

MAY 14, 1908.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 488.

ESTIMATE FOR ADDITIONAL WATCHMEN, ETC., IN OFFICE OF ASSISTANT TREASURER OF UNITED STATES AT ST. LOUIS, MO.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ASSISTANT TREASURER OF THE UNITED STATES AS TO THE NEED IN HIS OFFICE OF ONE ADDITIONAL DAY WATCHMAN AND COIN COUNTER AND ONE NIGHT WATCHMAN.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 18, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the assistant treasurer of the United States at St. Louis, of this date, as to the urgent need in his office of one additional day watchman and coin counter, at $900, and one night watchman, at $720, and I have to recommend that the said additional force be provided in the general deficiency bill now pending, to be available from the approval of the bill for the remainder of the fiscal year 1908 and for the fiscal year ending June 30, 1909.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*

The PRESIDENT OF THE SENATE.

OFFICE OF ASSISTANT TREASURER,
St. Louis, Mo., May 18, 1908.

MY DEAR MR. SECRETARY: On account of the large amount of silver presented at my office, I need one additional day watchman and coin counter; salary, $900. In addition to this, I need one night watchman; salary, $720.

My office is provided with only one night watchman; hence I am compelled to assign one of the coin counters and day watchmen to duty as night watchman from 4.30 to 9 p. m. each day; and the three coin counters have to be assigned alternately to duty Sundays.

As their work is extremely heavy, they handling from 3 to 5 tons of silver each day, they are complaining bitterly of being assigned to work overtime.

Hence, for the good of the office, I earnestly request that you recommend this additional help not provided for in the appropriation bill.

Very respectfully,

T. J. AKINS,
Assistant Treasurer, St. Louis.

Hon. GEORGE B. CORTELYOU,
Secretary of the Treasury.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 489.

CLAIM OF SOUTHERN PACIFIC COMPANY FOR DAMAGES TO FERRY STEAMER ENCINAL.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ACTING SURGEON-GENERAL, PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE, SUBMITTING A CLAIM OF THE SOUTHERN PACIFIC COMPANY FOR DAMAGES INFLICTED UPON THE FERRY STEAMER ENCINAL AT SAN FRANCISCO, CAL., AMOUNTING TO $1,517.08.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 18, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress in connection with the general deficiency bill, a copy of a communication from the Acting Surgeon-General, Public Health and Marine-Hospital Service, of the 1st instant, submitting the claim of the Southern Pacific Company for damages amounting to $1,517.08, inflicted upon the ferry steamer *Encinal* at San Francisco, Cal., by the quarantine steamer *Argonaut* in collision September 10, 1907, the blame for which was fixed by the United States supervising inspector of steam vessels upon the master and pilot of the quarantine steamer *Argonaut*.

Respectfully, GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

TREASURY DEPARTMENT,
SURGEON-GENERAL, PUBLIC HEALTH AND
MARINE-HOSPITAL SERVICE,
Washington, May 1, 1908.

SIR: There is transmitted herewith, for your information, a letter dated April 29, 1908, from Mr. Charles H. Bates, attorney for the Southern Pacific Company, inclosing a claim for damage to the ferry steamer *Encinal*, at San Francisco, Cal., on September 10, 1907, the said damage being sustained in a collision with the U. S. S. *Argonaut*, attached to the quarantine station at that port.

The claim is accompanied by a bill of particulars of the repairs necessary to the *Encinal*, in amount $1,517.08, and a report of Capt. John Birmingham, supervising inspector of the first district, Steamboat-Inspection Service, San Francisco, Cal., in which report the supervising inspector fixes the blame upon the master and pilot of the quarantine steamer *Argonaut*, and for which lack of skill and care his license as a master of steam vessels was suspended for a period of thirty days from September 15, 1907.

It would appear, therefore, that the fault lay with the master and pilot of the steamer *Argonaut*, and that no blame attached to the master of the steamer *Encinal* in the collision.

This claim had been previously submitted to the Bureau, and was referred to the Department for reference to the Comptroller of the Treasury for an expression of opinion as to whether any fund was available from which the above claim for damages could be paid. Under date of November 14, 1907, the Comptroller rendered a decision that the payment of the claim was not authorized, as Congress had never by general law, nor special act, consented to the direct enforcement of the claim in question.

The matter is now again submitted by Mr. Bates, with the request that it be again referred to the Department, with the view of being submitted to Congress for an inclusion of the amount in the deficiency appropriation bill now being considered by the House Committee on Appropriations.

Respectfully,

A. H. GLENNAN,
Acting Surgeon-General.

The SECRETARY OF THE TREASURY.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 490.

ESTIMATES FOR CONTINGENT EXPENSES, SHELVING AND TRANSFERRING RECORDS, ETC., TREASURY DEPARTMENT.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

REQUESTING

THE APPROPRIATION OF CERTAIN AMOUNTS FOR CONTINGENT EXPENSES, SHELVING AND TRANSFERRING RECORDS, ETC.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 16, 1908.

SIR: I have the honor to present the following estimates of appropriations, with the urgent request that they be included in some bill now pending before Congress, that the money provided therein may be available during the coming fiscal year:

Contingent expenses, Treasury Department, rent, 1909:	
Rent of buildings, namely: For rent of the third and fourth floors of the Union Building, located on G street, between Sixth and Seventh streets NW., Washington, D. C., including light, heat, janitor, and elevator service, and repairs, for offices of Auditor for the Interior Department	$13,000
Shelving and transferring records, etc.:	
For shelving and transferring records, furniture, and files from the Treasury building, including the personal services of laborers and skilled mechanics in connection therewith	10,500

The necessity for the above estimates is occasioned by the fact that there is now pending in the Senate a bill, which has been passed by the House, making appropriation for $20,000,000 for the following new projects:

Extensions of limits of buildings previously authorized	102
Enlargements and extensions	38
Buildings on sites already acquired	67
New sites and buildings	106
New sites	103
Site and building	1
Total	417

If the above bill becomes a law it will be necessary to increase the working force of the Office of the Supervising Architect by at least 100 persons and necessitate additional files space on account thereof. The Treasury building is now overcrowded. There is a large volume of unfinished work which remains to be done under the public-building bill of June 30, 1906, and imperative demands are constantly being made by Senators and Representatives that the buildings authorized by that bill be commenced at once.

As tending to show the already congested condition of the Treasury building, I quote from a recent letter of the Treasurer of the United States:

In accordance with your request, I submit to you an account of the floor space to accommodate the increased force that is absolutely necessary for the prompt and safe conduct of the banking business of this office.

The redemption division, which redeems United States currency, gold and silver certificates, is confronted now with an accumulation of $11,600,000 of money in his vaults uncounted for lack of sufficient space.

The condition of business in the national-bank redemption agency is very much more seriously congested than in the United States redemption division. There are over $44,000,000 national-bank notes unassorted for lack of sufficient space.

The congestion in the division of issue, where we put on the seal and numeral, and where we separate sheets into notes, is as serious as anything else. The employees there are packed almost as closely as they are in sweatshops, and ventilation is not only very inadequate, but imperfect, and it is absolutely necessary, if we are to meet the increased business now planned and preserve sanitary conditions that affect so seriously the life of the force, that the extension of this division should be made.

I would call your attention to the fact that we are expecting some more presses to be installed in the near future. In this case, it is absolutely necessary, otherwise they can not be set up.

The building estimated for above is of steel construction and suitable for office purposes. Each floor proposed to be rented contains about 18,000 square feet, with 12-foot ceilings. Two divisions of the office of the Auditor for the Post-Office Department and the purveying depot of the Public Health and Marine-Hospital Service are now quartered in this building. It is proposed to move thereto the office of the Auditor for the Interior Department, which now occupies in the Treasury building about 13,500 square feet for office purposes and 16,500 square feet for files, which accumulate at the rate of about 1,600 cubical feet quarterly. The space proposed to be rented would therefore provide for a considerable increase.

An additional appropriation of $8,500 for rent of buildings for the Treasury Department has been included in the legislative, executive, and judicial appropriation bill for the coming fiscal year, but this will provide for only about 80 officers and employees, and the general increase for the past three years has been over 100 employees per annum.

The increase of force demanded by the Supervising Architect in carrying out the work under the public-building bill and the general increase of employees in the Treasury building necessitates the renting of the additional space.

Respectfully, GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 491.

ESTIMATE FOR PRIZES TO BE AWARDED VESSELS OF NAVY FOR ECONOMY IN EXPENDITURE OF COAL.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ACTING SECRETARY OF THE NAVY SUBMITTING AN ESTIMATE OF APPROPRIATION FOR INCLUSION IN THE GENERAL DEFICIENCY BILL FOR PRIZES FOR ECONOMY IN THE EXPENDITURE OF COAL.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 18, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Acting Secretary of the Navy, of the 16th instant, submitting an estimate of appropriation for inclusion in the general deficiency bill for prizes for economy in the expenditure of coal, to be awarded by the Secretary of the Navy, and to be available until used, $2,500.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

NAVY DEPARTMENT,
Washington, May 16, 1908.

SIR: The Department has the honor to request that a provision be inserted in the general deficiency bill for the sum of $2,500, "to be expended by the Secretary of the Navy under such rules and regulations as he may establish for prizes to be awarded vessels for economy in the expenditure of coal."

Under a system recently inaugurated by the commander in chief of the United States Atlantic Fleet a total net increase in economy of 1,460 tons was the result during the run from Rio to Magdalena Bay, and the Department deems it to be of the utmost importance that cash prizes, as recommended by the commander in chief, be appropriated

[illegible] therefore urged that the item mentioned be inserted in the general deficiency bill.

Very respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

The SECRETARY OF THE TREASURY.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1908, by the Navy Department.

NAVY DEPARTMENT.

UNDER THE SECRETARY.

Prizes for economy in the expenditure of coal:

For prizes to be awarded vessels of the Navy for economy in the expenditure of coal, to be expended by the Secretary of the Navy under such rules and regulations as he may establish, to be available until used (submitted) $2,500

FLEET GENERAL ORDER No. 7.

UNITED STATES ATLANTIC FLEET,
U. S. S. CONNECTICUT, FLAGSHIP,
San Pedro, Cal., April 22, 1908.

1. The commander in chief has to present to the officers and men of the fleet the following statement of results accomplished by the battle ships under the rules for the engineering efficiency competition established in Fleet General Order No. 2, of February 17, 1908.

2. In drawing up General Order No. 2 a certain standard was set on which to base the figures showing the improvement in performance of the several ships. While it was realized that the lack of available data prevented that standard from being as accurate as was desirable, it was then thought that slight injustice, if any, would result from its use. It has been found since, however, that certain ships had less coal on hand at Hampton Roads than was credited on their books, and this and other reasons now show that a positive statement of relative improvement based on it would be a very inaccurate statement of performance. Not only this, but the impossibility of holding the full power trials called for by the order, because of lack of time and other reasons, would necessitate the arrangement of final standing solely on the economy test from Rio to Magdalena Bay, which, for the above reasons, the commander in chief thinks would be manifestly far from fair under the circumstances.

3. In view of these facts, and as no money prizes can be available until next year, the commander in chief has decided, in a desire to do justice to all, to make no positive award this year, but instead merely to publish the results of the work, with some comments thereon. The results are given in the following tables:

A.—*Coal consumption in pounds per knot from Hampton Roads to Magdalena Bay.*

	Net coal for steaming, Hampton Roads to Rio de Janeiro.	Net coal for steaming, Rio to Magdalena Bay.	Total net coal for steaming, Hampton Roads to Magdalena Bay.	Coal in pounds per knot, Hampton Roads to Magdalena Bay.
Kentucky	3,294,227	5,157,039	8,451,266	628.9427
Kearsarge	3,589,553	5,422,581	9,012,134	670.8080
Alabama	3,508,916	5,765,276	9,274,192	690.1848
Connecticut	3,738,877	5,655,399	9,394,276	699.1214
Minnesota	3,754,347	5,699,999	9,454,346	703.5916
Illinois	3,699,913	6,050,802	9,750,715	725.6476
Georgia	3,975,540	5,944,780	9,920,320	738.2770
Virginia	4,390,019	5,847,481	10,237,500	761.8733
Ohio	4,080,656	6,271,934	10,352,590	770.4391
Louisiana	4,356,963	6,134,057	10,491,020	780.7410
Missouri	4,166,666	6,378,491	10,545,157	784.7699
Vermont	4,673,717	6,179,373	10,853,090	807.6862
Rhode Island	4,145,617	6,893,237	11,038,854	821.5108
Kansas	4,364,425	6,749,040	11,113,465	827.0634
New Jersey	4,783,723	7,732,042	12,115,765	901.6544
Maine	5,525,274	6,956,591	14,481,865	1,077.7394

Total number knots, 13,437.46.
Distance Hampton Roads to Rio, 5,22[illegible].96 knots.
Distance Rio to Magdalena Bay, 8,210.50 knots.

B.—*Relative increase or decrease in efficiency in coal consumption per knot.*

	Standard, Hampton Roads to Rio.	Rio to Magdalena Bay.	Weight in contest column 1 times 20 divided by column 2.
Vermont	849.1901	752.6813	23.7601
Virginia	839.9121	712.1955	23.5880
Louisiana	833.5877	747.0991	22.3158
Georgia	760.6127	730.1358	20.8350
Kearsarge	686.7644	660.4545	20.7970
Connecticut	715.3336	688.8080	20.7702
Minnesota	718.2934	694.2329	20.6982
Missouri	797.1795	776.8699	20.5228
New Jersey	915.2368	893.0080	20.4978
Ohio	780.7238	763.8918	20.4407
Kansas	835.0154	820.9488	20.3427
Kentucky	630.2618	628.1029	20.0687
Maine	1,057.1126	1,090.8582	19.3812
Illinois	707.8789	736.9590	19.2108
Alabama	671.3367	702.1826	19.1214
Rhode Island	793.1332	839.5636	18.8938

C.—*Net coal consumption in pounds per knot in classes, according to size of ships, from Hampton Roads to Magdalena Bay.*

	Hampton Roads to Rio.	Rio to Magdalena Bay.	Net improvement in economy due to General Order No. 2.
Displacement 16,000 tons.			
Connecticut	715.3336	688.8080	26.5256
Minnesota	718.2934	694.2329	24.0605
Louisiana	833.5877	747.0991	86.4885
Vermont	894.1901	752.6813	141.5088
Kansas	835.0154	820.9488	14.0666
	.....	.....	292.6501
Displacement 14,948 tons.			
Virginia	839.9121	712.1955	127.7166
Georgia	760.5127	730.1358	30.4759
Rhode Island	793.1332	839.5636	−45.4304
New Jersey	915.2358	893.0080	22.2288
	.....	.....	133.9919
Displacement 12,500 tons.			
Ohio	780.7238	763.8418	16.8520
Missouri	797.1795	776.6599	20.3096
Maine	1057.1125	1090.8582	−33.7456
	.....	.....	3.4160
Displacement 11,552 tons.			
Alabama	671.3367	702.1826	−30.8459
Illinois	707.8789	739.9590	−29.0801
	.....	.....	−59.9260
Displacement 11,520 tons.			
Kentucky	630.2618	628.1029	2.1589
Kearsarge	686.7644	660.4445	26.3199
	.....	.....	28.4788

Total improvement in economy for 16 ships, 398.6108 pounds per knot.

For the run of 8,210.5 knots from Rio to Magdalena Bay, these figures show a total net increase in economy of 1,460 tons.

OR ECONOMY IN EXPENDITURE OF COAL.

oal used for all purposes from Hampton Roads to Magdalena Bay.

	4,736.500	Missouri	5,689.390
	4,922.000	Louisiana	5,709.890
	4,985.810	Vermont	5,991.000
	5,141.006	Kansas	6,038.000
it	5,310.000	Rhode Island	6,062.370
	5,372.000	New Jersey	6,342.611
	5,530.981	Maine	7,482.000
	5,603.000		
a	5,617.301	Total	90,533.823

From tl tables it can at once be seen what ships have consistently done well the firs d what ships have made the most marked improvement in their ay of s a feature which all must see to be one of vital importance to as a

in chief desires to congratulate the officers and men of the fleet have shown in the matter, and on their zeal in endeavoring to of the ships in this particular, and especially is this congratula- ersonnel of those ships who have shown high economy from st al shown marked improvement in that feature.

In inaugurating this system the commander in chief felt that perhaps it would impossible to achieve completeness with it the first year, and that this has proved be the case should not be a source of surprise or regret to anyone. By our efforts have placed the scheme on a good working basis, and have secured satisfactory ata on which to base a positive award next year. That so much has been accom- ished, and that a general interest has been created in the work is believed to be a of great satisfaction to us all. The commander in chief hopes that this interest inue, as has the general zeal in gunnery brought forth by similar methods. commander in chief is glad to announce to the officers and men that the partment has expressed its full approbation of the system, and has asked ress to provide money prizes for yearly awards hereafter. There is every rea- to hope that Congress will accede to this request.

In view of the results already obtained the commander in chief will make cer- recommendations to his successor relative to some proposed changes in the pres- rules and standards, in order to make them more suitable for the next year's work. He greatly hopes that the marked improvement already shown will continue throughout the next year.

R. D. Evans,
Rear-Admiral, U. S. Navy, Commander in Chief U. S. Atlantic Fleet.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 492.

ESTIMATE FOR PURCHASE OF HORSES AND WAGONS FOR TREASURY DEPARTMENT, 1909.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

SUBMITTING

AN ITEM IN THE ESTIMATES OF APPROPRIATIONS FOR THE TREASURY DEPARTMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1909, FOR PURCHASE OF HORSES AND WAGONS FOR OFFICE AND MAIL SERVICE, AMOUNTING TO $5,000.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 18, 1908.

SIR: I have the honor to invite your attention to the following item in the estimates of appropriations for the Treasury Department for the fiscal year ending June 30, 1909:

For purchase of horses and wagons for office and mail service, to be used only for official purposes, etc., $5,000.

The amount ordinarily appropriated for this item is $3,500, but $1,500 was added for the coming fiscal year for the purchase of a carriage team for the official use of the Secretary of the Treasury. The House failed to appropriate this additional amount, and on February 24, 1908, I addressed a letter to Hon. William B. Allison, chairman Committee on Appropriations, United States Senate, calling his attention among other things to the above item.

The bill as passed by the Senate, however, does not provide any amount on the above account.

Since the letter above referred to was written the Treasury Department has been compelled to sell one of its horses, the same being condemned by experts as being unfit for further service on paved streets. Another horse belonging to the Secretary's driving team is so lame as

to be unfit for use. This team has been in the service of the Department for seven or eight years, and the horse in question is about sixteen years old. There is no possibility of this horse being able to perform further service. The horse used on the Treasury mail wagon is also old and should be turned out to pasture for several months.

From the above it will be seen that if the Department is not in a position to purchase additional horses during the coming fiscal year, the service will be badly crippled.

The appropriation of $3,500 is not more than sufficient to buy forage and pay for medical attention and necessary repairs, and it is earnestly hoped that the additional $1,500 asked for will be provided at the present session.

Respectfully, GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 493.

SUPPLEMENTAL ESTIMATE FOR PAY OF NAVY, 1908.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ACTING SECRETARY OF THE NAVY, SUBMITTING A SUPPLEMENTAL ESTIMATE OF DEFICIENCY IN APPROPRIATION FOR PAY OF THE NAVY FOR THE FISCAL YEAR ENDING JUNE 30, 1908, TO MEET CERTAIN INCREASES IN THE PAY OF OFFICERS AND ENLISTED MEN OF THE NAVY UNDER THE PROVISIONS OF THE NAVAL ACT APPROVED MAY 13, 1908, AMOUNTING TO $457,363.50.

MAY 18, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 18, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Acting Secretary of the Navy, of the 16th instant, submitting a supplemental estimate of deficiency in the appropriation for pay of the Navy for the fiscal year ending June 30, 1908, to meet certain increases in the pay of officers and enlisted men of the Navy under the provisions of the naval act approved May 13, 1908, $457,363.50.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

NAVY DEPARTMENT,
Washington, May 16, 1908.

SIR: I have the honor to forward herewith, for transmission to Congress, a supplementary deficiency estimate, in the sum of $457,363.50, to meet the increases in pay of officers and enlisted men of the United

States Navy from May 13, 1908, the date of the passage of the act authorizing same, to June 30, 1908, the end of the current fiscal year, both inclusive.

Very respectfully, TRUMAN H. NEWBERRY,
Acting Secretary.

The SECRETARY OF THE TREASURY.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1908, by the Bureau of Navigation, Navy Department.

NAVY DEPARTMENT.

Pay of the Navy—	
To supply a deficiency in the appropriation, "Pay of the Navy," for the fiscal year ending June 30, 1908 (act of Mar. 2, 1907, vol. 34, p. 1176, sec. 1)	$457,363.50
Amount appropriated for the fiscal year for which the appropriation is required	21,000,000.00

NOTE.—An act of Congress approved May 13, 1908, provides for certain increases in the pay of officers and enlisted men of the United States Navy, to become effective upon the passage of the act. The Bureau estimates that the above sum will be necessary to meet these increases from May 13, 1908, the date of the passage of the act, to the close of the fiscal year ending June 30, 1908.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 494.

ESTIMATES OF EXPENDITURES ON THE BOTANIC GARDEN, 1850–1907.

Mr. DICK presented the following

ESTIMATES OF THE EXPENDITURES ON THE BOTANIC GARDEN FROM 1850 TO 1878, AND FROM 1879 TO AND INCLUDING 1907, MAKING A TOTAL OF $1,245,028.69.

MAY 19, 1908.—Ordered to be printed.

[House Report No. 385, Forty-sixth Congress, third session.]

DEPARTMENT OF AGRICULTURE.

[March 3, 1881.—Recommitted to the Committee on Agriculture and ordered to be printed.]

Mr. Le Fevre, from the Committee on Agriculture, submitted the following report:

The Committee on Agriculture, to whom was referred the House resolution adopted on the 18th day of December, 1879, in terms as follows—

Resolved, That the Committee on Agriculture be authorized to take into consideration such measures as may tend to promote the agricultural interests of the country, to investigate the system and workings of the Department of Agriculture, and to consider the propriety of consolidating or reorganizing the public gardens or conservatories of this city, or their total abolition, and report by bill or otherwise such additional legislation as may be deemed necessary for the promotion of the Department of Agriculture and the advancement and protection of agricultural interests. Said committee shall have power to send for persons and papers, to employ a clerk, stenographer, and such other persons as may be necessary to such investigation. And in order to defray the expenses of such investigation, the Clerk of the House is directed to pay to the Sergeant-at-Arms of the House, out of the contingent fund of the House, the sum of three thousand dollars, whose receipt shall be a good and sufficient voucher to the Clerk in the settlement of his account. The aforesaid sum of money, or so much thereof as may be necessary, shall be disbursed on vouchers approved by the chairman of said committee; and the Sergeant-at-Arms shall make report to this House in detail of the manner in which said sum has been expended, accompanied by vouchers; which report, when examined and approved by the Committee on Accounts, shall be deemed a sufficient settlement of his accountability therefor; and any unexpended balance in his hands shall be paid by him into the Treasury to the credit of the fund from which it is paid—

beg leave to respectfully report:

Touching that branch of the inquiry relating to the public gardens and the propriety of consolidating and reorganizing the same, your committee find, after careful investigation, that the garden and propagating grounds known as the monumental garden, and under the con-

trol and direction of the office of public buildings and grounds, has for its object the propagation of plants to be used in the improvement and decoration of the public grounds in charge of that office, and the raising of shrubs from seeds and cuttings, and the acclimating of the same. Your committee find that this institution had its beginning as far back as 1857, when the Commissioner of Public Buildings and Grounds selected a small triangular reservation some two acres in extent, lying between Third and Four-and-a-half streets southwest, and Missouri avenue and the canal, as the site of a propagating garden, and constructed there a few cold frames for the protection and winter storing of bulbs and half-hardy plants. These frames were subsequently increased in number, and a cold pit constructed for the winter protection of larger plants, and a number of camelias, roses, etc., were purchased to fill the same.

The only attempt at bedding out plants during this period was made in the Capitol grounds for five or six small circular and diamond-shape beds that were cut in the lawns west of the Capitol, and planted with bulbs and annuals and a few verbenas, geraniums, and heliotropes. At the same time open spaces in a border planted with trees and shrubs surrounding the Capitol grounds were planted with a few hardy flowering herbaceous plants and annuals.

In 1862, under the direction of the Commissioner of Public Buildings and Grounds, a small single-roofed greenhouse, 30 feet long by 15 feet wide, was constructed at the propagating garden, and the stock of flowering plants increased by purchase from local florists. From this time the houses and the collection of plants gradually enlarged, and for some four or five years subsequent, bouquets of flowers from this garden were frequently made and placed upon the desks of the Vice-President and the Speaker of the House of Representatives during the sessions of Congress, and a few bouquets were occasionally sent to members of the Committee on Public Buildings and Grounds, and their friends, on request being made for the same. Annual collections of seeds were made and they were distributed to Members of Congress, and some window plants were furnished upon request.

On March 2, 1867, Congress abolished the office of Commissioner of Public Buildings and Grounds, and no further enlargement of the propagating houses was made until the summer of 1870, under the authority of the act of July 15 of that year, when a span-roofed house and a small propagating house were added, making the total space occupied by glass houses at that time some 140 by 20 feet. Further improvements were made in the autumn of 1871 and the spring of 1872, when a number of ornamental flowering and foliage plants were added, making the collection of greenhouse plants worth, at that time, some $1,500. The first distribution of any magnitude from the garden to Members of Congress and government officials was made during the winter of 1871 and the spring of 1872, when 11,125 soft-wooded bedding plants of varieties that could be easily propagated, and about 22,000 papers of seeds of flowering annuals collected and cured the previous season were thus distributed. During the same spring about 1,000 plants were bedded in the public grounds. In this year the nursery was started under the authority of the act of June 10, 1872, a number of young evergreens and deciduous trees having been purchased from various nurseries, while a number of seed beds were formed and planted with the seeds saved the preceding summer.

In 1873, in consequence of certain changes of grade made necessary by the improvements of the board of public works, the whole establishment was removed, under authority of the act of March 3 of that year, to its present site upon the southern part of the monumental lot, where the greenhouses were rebuilt, enlarged, and extended from year to year, under the several acts making appropriations for the same, the last extension having been made in the summer of 1877. Every addition increased the facilities for the propagation of plants and flowers, and the distribution was correspondingly increased. During the winter of 1872 and the spring of 1873, 17,000 plants and 22,000 packages of seeds were distributed, and about 1,000 plants bedded in the public parks. During the ensuing winter 35,000 plants were set out, 25,000 papers of seeds distributed, and 2,500 plants bedded in the public grounds. During the winter of 1874 and the spring of 1875, 60,000 plants and 22,000 packages of seeds were distributed and 1,500 plants were bedded. In the winter of 1875 and the spring of 1876 about 65,000 plants were distributed and 20,000 set out in the public reservations, which planting was fully five times greater than had taken place during any preceding year. No seeds were distributed this year nor any year thereafter. The distribution of plants, however, was continued, and during the winter of 1876 and the spring of 1877, 40,000 plants were distributed and 20,000 bedded in the public grounds. In the winter of 1877 and the spring of 1878, 70,000 plants were distributed and 30,000 bedded in the public parks.

On the 20th of June, 1878, Congress stopped the distribution of plants by the enactment of a law which provided—

> That hereafter only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations; to which purpose only said productions of the greenhouses and nursery shall be applied.

After this the whole product of the garden, nursery, and greenhouses was devoted to the improvement and decoration of the public grounds, and during the spring of 1879 some 50,000 well-grown flowering and subtropical and foliage plants were bedded out in the various parks and public grounds, thus greatly enhancing their beauty and attractiveness.

During the year 1879 the following flowers were distributed from the propagating garden: 2,926 baskets of flowers, 106 bouquets, 12 center stands, 54 funeral wreaths, 70 funeral crosses, 341 assortments of cut flowers, 75 boutonnières. The fair money value of these flowers was $6,626. In each of the years 1877 and 1878 about the same value of flowers was sent out as in 1879. The value of the flowers distributed in 1876 was about three-quarters of the value of those distributed in 1879; in 1875 about one-half, and for the three years preceding 1875 about one-third as much as in 1879. These flowers were distributed to Members of Congress, members of the Cabinet, judges of the Supreme Court, the General of the Army, and the Admiral of the Navy, churches, hospitals, charitable fairs, and for use at the funerals of employees of the Government. There is no law on the statute book providing for or governing this distribution of flowers, and the practice rests upon custom alone.

According to the estimates of Colonel Casey, the superintendent, the value of the material furnished from these greenhouses and nursery during the past eight years amounts to about $67,000. These houses and the nursery are situated upon the south side of the monumental lot

and occupy an area of some seven acres, the nursery occupying about five acres and the propagating houses and other spaces the remaining portion. The greenhouse structures consist of six span-roofed houses of the following dimensions: Two houses 100 feet long by 12 feet wide; one house 100 feet long by 10 feet wide; one house 100 feet long by 20 feet wide; one house 100 feet long by 25 feet wide, and two rows of pits of cold frames 100 feet long by 3 feet wide, for winter protection of plants not injured by slight frosts. At the date of Colonel Casey's examination by this committee, the collection of flowers and ornamental foliage, subtropical plants, etc., in these greenhouses numbered over 60,000, many of them valuable specimens of palms, crotons, etc., which are not usually found in private collections of plants. The total value of the present collection of plants is about $10,000. The value of the houses is about $10,000, and there is room in them to furnish 12,000 square feet of shelving, affording space for the propagation of 80,000 or 100,000 plants per year. There are about 25,000 trees and shrubs in the nursery, valued at $4,000. The cost of maintaining the greenhouses and nursery, as now organized and administered, averages $8,000 per year.

Your committee recommend:

1. That the greenhouses and nursery shall be so reorganized as to be known hereafter as the "propagating house and nursery" for the Public Grounds, and shall be separate and distinct from the other horticultural establishments in the city, and shall be solely under the charge of the Office of Public Buildings and Grounds.

2. That the plants of every description now in the greenhouses and nursery not suitable for planting in the public grounds in the spring and summer (such as camellias, azaleas, ferns, orchids, tropical species, roses, etc.), be transferred to the conservatory of the Executive Mansion (where many such plants are needed); and that the greenhouses be devoted exclusively to raising such plants as are suitable only for planting in the public grounds, and that no production, of any kind or description, of these houses and this nursery be used for any other purpose than the improvement of the public reservations in the District of Columbia, under charge of the Office of Public Buildings and Grounds; and that the chairman be instructed to prepare a bill in accordance with this report.

BOTANIC GARDEN.

The establishment known as the Botanic Garden originated, your committee find, in a small appropriation of $1,200 in the civil and diplomatic appropriation bill of March 3, 1843, for taking care of botanical specimens brought home by the United States exploring expedition under Captain Wilkes. It was placed under control of the Joint Committee on the Library, because of the fact that the publication of the results of this exploring expedition was in charge of that committee. The successive appropriations for the enlargement and maintenance of the Botanic Garden and greenhouses have continued to be disbursed under the direction of that committee. The salaries of the superintendent, the assistant superintendent, and the laborers, not having been fixed by any law or regulation of Congress, the disbursements of the various appropriations have been left to the discretion of the Joint

Library Committee, and in fact that committee has been supreme in all matters relating to the institution. From the date of the first appropriation down to 1878 the amounts expended have been as follows:

I.—*For construction.*

May 15, 1850, the sum of $5,000 was appropriated and expended for the removal of the public greenhouse and the botanical collection therein to a suitable site on the public grounds, and for the erection of such other greenhouse as was deemed necessary by the Joint Committee on the Library, by the direction of the said joint committee and under the supervision of the Commissioner of Public Buildings.

March 3, 1855, the sum of $1,500 was appropriated, and expended under the direction of the Commissioner of Public Buildings, for the erection of a suitable house for the plants then recently brought from Japan for the United States.

June 2, 1858, the sum of $1,044.16 was appropriated and expended for reglazing and repairing the damages to the greenhouses by the hailstorm of June, 1857.

April 7, 1866, the sum of $2,500 was appropriated, and expended under the direction of the Joint Committee on the Library, for the purchase and removal of materials and for erecting four greenhouses in the Botanic Garden.

March 2, 1867, the sum of $35,000 was appropriated, and expended for the construction of a new greenhouse, with central dome and a wing, to correspond in size with the greenhouse then standing in the Botanic Garden, and was built of iron and glass according to a plan prepared by the architect of the Capitol extension, and approved by the Joint Committee on the Library.

July 25, 1868, the sum of $10,252.50 was appropriated, and expended to complete the botanical conservatory in accordance with the estimate of the architect of the Capitol extension, and under the direction of the Joint Committee on the Library.

July 15, 1870, the sum of $3,000 was appropriated, and expended for a propagating house for the use of the public grounds under the public gardener.

July 15, 1870, the sum of $1,500 was appropriated, and expended for repairs of the greenhouses at the propagating gardens.

July 25, 1870, the sum of $5,025 was appropriated, and expended for putting Mansard story on the western office buildings, and for casual repairs for iron floor grating, iron screen for rotunda, and glass screens.

June 10, 1872, the sum of $13,000 was appropriated, and expended for reconstructing the eastern parallelogram of the conservatory in the Botanic Garden to make it correspond with that at the west of the rotunda.

June 10, 1872, the sum of $4,500 was appropriated, and expended for extending the propagating houses (including the use of the sash from the old portion of the conservatory) and general repairs to building.

March 3, 1873, the sum of $6,500 was appropriated, and expended for repairs to buildings, improvements to heating apparatus and walks, for grading and inclosing square on Maryland avenue, oppo-

site the Botanic Garden, bounded by Second, Third, and B streets, and for erecting thereon houses for storing pots, soil, coal, and plants.

March 3, 1873, was appropriated, and expended $17,500 for completing the new conservatory by erecting an octagon at the eastern end in conformity with the one at the western end.

June 22, 1874, the sum of $3,000 was appropriated, and expended for continuing improvements and buildings at the Botanic Garden.

March 3, 1875, the sum of $1,000 was appropriated and expended for an additional forcing-house.

March 3, 1875, the sum of $350 was appropriated, and expended for sash for double glazing north front of conservatory.

March 3, 1875, the sum of $400 was appropriated, and expended for lining with wood the iron ventilators of the new conservatory.

March 3, 1875, the sum of $1,200 was appropriated, and expended for a building for soil and coal shed on the south side of Maryland avenue.

II.—*For repairs and equipment, i. e., fencing, paving, draining, repairing of buildings, improvements, etc.*

July 4, 1876, the sum of $5,000 was appropriated, and expended for conveying the surplus water of the Capitol to the Botanic Garden, making a basin, and purchasing a fountain of Hiram Powers.

March 3, 1851, the sum of $750 was appropriated, and expended for inclosing and preparing public grounds for nursery.

March 3, 1855, the sum of $12,000 was appropriated and expended for filling up and draining the grounds in the vicinity of the national greenhouse, known as the Botanic Garden, and for walling with brick the creek which passes through the same.

May 15, 1866, the sum of $5,650 was appropriated, and expended for the same purposes as that of March 3, 1855.

March 3, 1857, the sum of $1,000 was appropriated and expended for completing the improvement of the grounds of the Botanic Garden.

August 18, 1856, the sum of $6,000 was appropriated, and expended for repairing heating apparatus, raising, repairing passages, painting, reglazing, and extending seed-room and greenhouse according to plan, and under the direction of the Commissioner of Public Buildings.

March 3, 1857, the sum of $3,360 was appropriated, and expended for flagging the main avenue in the Botanic Garden and for a stone gutter for the same.

March 3, 1857, the sum of $2,600 was appropriated, and expended for extending the propagating department of the Botanic Garden and introducing water into the same from the Capitol square, under the direction of the Commissioner of Public Buildings.

March 3, 1859, the sum of $1,000 was appropriated, and expended for introducing the Potomac water into the Botanic Garden and building a cistern therein.

July 28, 1866, the sum of $15,000 was appropriated and expended for an iron fence around the Botanic Garden.

March 3, 1869, the sum of $5,000 was appropriated, and expended for paving the main walk through the Botanic Garden with a uniform and durable material.

March 3, 1869, the sum of $4,000 was appropriated, and expended for repairs of buildings in the Botanic Garden and the erection of suit-

able iron stands for plants in the new conservatory, under the direction of the Joint Committee on the Library and by the Architect of the Capitol.

July 15, 1870, the sum of $300 was appropriated, and expended for concreting and $1,850 was appropriated, and expended by the Joint Committee on the Library for completing the walk through the Botanic Garden.

July 25, 1870, the sum $700 was appropriated, and expended for labor and materials for gutters around the walks.

July 25, 1870, the sum of $7,500 was appropriated and expended for fencing the Botanic Garden on the Maryland avenue side in the same manner as the side on Pennsylvania avenue.

March 3, 1871, the sum of $6,000 was appropriated, and expended for concreting and paving walks around the buildings of the Botanic Garden, for general repairs to the buildings, and for improving the large basin with a brick or stone wall and marble coping.

March 3, 1871, the sum of $9,840 was appropriated, and expended for the completion of the paving of the main walk through the Botanic Garden with Seneca brown-stone flagging, taking up and removing blue-stone flagging from said walk and relaying in Maryland avenue along the south side of the Botanic Garden.

May 18, 1872, the sum of $5,000 was appropriated, and expended for repairs of buildings and improving Botanic Garden.

June 10, 1872, the sum of $7,500 was appropriated, and expended for continuing fence and erecting gateways on Third street side and $500 for the construction of a sewer and trap across Third street to convey the drainage of the Botanic Garden.

March 3, 1873, the sum of $4,000 was appropriated, and expended for taking down and rebuilding fence along Maryland avenue and Third street to conform to the new grade, and the sum of $9,500 for the construction of a brick wall and iron fence along First street between Pennsylvania and Maryland avenues and for gateways on the same line.

June 23, 1874, the sum of $11,925 was appropriated, and expended for work and grading in and around the Botanic Garden and completing brick wall and iron fence.

March 3, 1875, the sum of $600 was appropriated, and expended for painting and glazing, $800 for walks for garden, $600 for fence on Maryland avenue (south side), and $1,500 for filling and grading the bed of the old canal.

July 31, 1876, the sum of $3,500 was appropriated, and expended for painting, glazing, repairing fences, porch, &c.

March 3, 1877, the sum of $1,100 was appropriated, and expended for painting, plumbing, and repairs.

December 15, 1877, the sum of $1,300 was appropriated, and expended for sewers, grading, and repairs.

June 20, 1878, the sum of $6,450 was appropriated, and expended for painting, repairs, grading, and rock work, and the sum of $6,000 for the purchase of the Bartholdi fountain.

March 3, 1879, the sum of $5,495 was appropriated, and expended for improvements and repairs.

III.—*For annual salaries and hire of laborers.*

March 3, 1843, the sum of $1,200 was appropriated, and expended for taking care of and preserving botanical and horticultural specimens brought home by the exploring expedition, enlarging the greenhouse, and for salary of the keeper of the same, under direction and control of the Joint Committee on the Library.

June 17, 1844, the sum of $2,200 was appropriated, and expended for the same purposes as that of March 3, 1843.

March 3, 1855, the sum of $3,000 was appropriated, and expended for the support of the public greenhouses, including pay of horticulturist and assistants.

August 18, 1856, the sum of $5,000 was appropriated, and expended for maintaining the Botanic Garden and greenhouses, including pay of horticulturist and assistants, under direction of Library Committee of Congress.

March 3, 1857, the sum of $5,121.50 was expended for pay of horticulturist and assistants in the Botanic Garden and greenhouses, under the direction of the Library Committee of Congress.

June 2, 1858, $5,121.50 was expended for the same purposes.

March 3, 1859, $5,121.50 was expended for the same purposes.

June 25, 1860, $5,121.50 was expended for the same purposes.

March 2, 1861, $5,121.50 was expended for the same purposes.

March 1, 1862, $5,121.50 was expended for the same purposes.

March 3, 1863, $5,121.50 was expended for the same purposes.

July 2, 1864, the sum of $6,145.80 was expended for pay of superintendent of Botanic Garden, and assistants in Botanic Garden and greenhouses, under direction of the Library Committee of Congress.

April 7, 1866, the sum of $6,145.80 was expended for the same purposes as that of July 2, 1864.

July 23, 1866, the sum of $6,145.80 was expended for the superintendent and assistants in the Botanic Garden and greenhouses, under the direction of the Library Committee of Congress.

July 28, 1866, the sum of $2,854.40 was expended as 20 per cent. additional to superintendents and assistants of the public garden.

March 2, 1867, the sum of $6,145.80 was expended for the pay of superintendents and assistants.

March 2, 1867, the sum of $1,229.16 was expended as 20 per cent. additional allowance on the same.

July 20, 1868, the sum of $11,296 was expended for pay of superintendents and assistants.

March 3, 1869, $11,296.96 was expended for the same purposes.

July 12, 1870, $11,296 was expended for the same purposes.

March 3, 1871, $11,296 was expended for the same purposes.

March 3, 1871, the sum of $850 was expended for two additional laborers at Botanic Garden.

May 8, 1872, the sum of $12,146 was expended for pay of superintendent and assistants in Botanic Garden, and 2 additiona laborers.

March 3, 1873, the sum of $12,146 was expended for the same purposes.

June 20, 1874, the sum of $12,146 was expended for the same purposes.

March 3, 1875, the sum of $12,146 was expended for pay of superintendent and assistant in Botanic Garden, and greenhouses and laborers.

August 15, 1876, the sum of $9,040 was expended for the same purposes.

March 3, 1877, the sum of $10,000 was expended for the same purposes.

June 19, 1878, the sum of $10,000 was expended for the same purposes.

June 21, 1879, the sum of $10,000 was expended for the same purposes.

IV.—*For stock, viz, trees, shrubs, seeds, manure, tools, fuel, repairs, &c.*

March 3, 1857, the sum of $2,300 was expended for procuring manure, tools, fuel,—for repairs, purchasing trees and shrubs for Botanic Garden, under direction of the Library Committee of Congress.

June 2, 1858, the sum of $2,300 was expended for same purposes.

June 25, 1860, the sum of $3,300 was expended for same purposes.

March 2, 1861, the sum of $3,300 was expended for same purposes.

March 1, 1862, the sum of $3,300 was expended for same purposes.

March 3, 1863, the sum of $3,300 was expended for same purposes.

July 2, 1864, the sum of $3,300 was expended for procuring manure, tools, fuel, trees, shrubs, and for repairs.

April 7, 1866, the sum of $3,300 was expended for same.

July 23, 1866, the sum of $3,300 was expended for same.

March 2, 1867, the sum of $3,300 was expended for same.

March 2, 1867, the sum of $100 was expended for flower-pots, mats, twine, &c.

July 20, 1868, the sum of $1,000 for the same purpose.

July 20, 1868, the sum of $5,400 was expended for grading, draining, manure, tools, fuel, trees, shrubs, and repairs.

March 3, 1869, the sum of $5,000 for the same purpose.

March 3, 1869, the sum of $1,000 was expended for flower-pots, mats, twine, &c.

July 15, 1870, the sum of $1,000 was expended for the same purpose.

July 15, 1870, the sum of $5,000 was expended for grading, draining, manure, tools, fuel, trees, shrubs, and repairs.

March 3, 1871, the sum of $5,000 was expended for same.

May 8, 1872, the sum of $5,000 was expended for same.

March 3, 1873, the sum of $5,000 was expended for same.

June 20, 1874, the sum of $5,000 was expended for same.

March 3, 1875, the sum of $5,000 was expended for same.

August 15, 1876, the sum of $3,000 was expended for same.

January 26, 1877, the sum of $500 was expended for coal and labels.

March 3, 1877, the sum of $1,000 was expended for tubs, pots, horse-hire, manure, &c.

March 3, 1877, the sum of $4,000 was expended for improving garden, manure, tools, fuel, etc.

June 19, 1878, the sum of $4,000 was expended for same purpose.

The following table shows the aggregate sum expended·

I.—Construction	$112,271.66
II.—Repairs and equipment	153,290.00
III.—Annual salaries and hire of laborers	199,476.22
IV.—Stock	89,300.00
	554,337.88

Under the combined management of the Joint Library Committee and the Superintendent, the establishment has been made to perform the double function of a propagating garden of flowers, plants, and seeds for distribution through members of Congress, and the collections of a botanical museum at the capital for the benefit of students of botany and the public generally. No law has governed the distribution of the products of the garden, nor has any account been kept by which the aggregate value of such products so distributed can be ascertained. The distribution of bouquets to members of Congress upon the order of the chairman of the Library Committee, has become a custom which your committee recommend shall be discontinued in the future. The annual cost of this institution has reached the respectable sum of about $15,000, and seems altogether out of proportion, in the opinion of your committee, to the benefits derived.

In conclusion, your committee would recommend the consolidation of the Botanic Garden with the Department of Agriculture, and the transfer of all the plants, shrubs, trees, and other property which has accumulated, to the control of the Commissioner of Agriculture. Such action by Congress would, in the opinion of your committee, not only tend to promote the public welfare by enhancing the attractiveness of the Department of Agriculture and increasing its usefulness, but would do away with the anomaly of an institution having no real existence in law and controlled solely by a committee of Congress. Under such control the expenses have increased with annual regularity, until from a yearly expense of less than $2,000, the testimony shows, they have reached the large sum above named. Consolidation would legitimize the institution and place it under general laws made for the government of the Agricultural Department, and, it is believed by your committee, would result in an annual reduction of expense of many thousands of dollars. One of the results of the transfer of the control of this garden to the Department of Agriculture would be the immediate reduction in the force of the higher-salaried persons employed. The officials in charge of similar branches of the Department of Agriculture could, with little additional trouble to themselves or expense to the government, superintend the Botanic Garden.

Another great advantage to be derived from the consolidation of all such gardens under one head would be the prevention of the duplication of plants, some of them difficult to procure, expensive to preserve, and valuable only as specimens; such duplication your committee find has frequently taken place under the present system. Not only would this be avoided by the plan suggested, but the ultimate result would be the formation of one grand collection of properly classified and catalogued plants of all kinds, such as the present system of separate gardens will render impracticable so long as it is continued.

Many other reasons might be advanced in support of the consolidation plan, but your committee deem the few important ones already stated sufficient to warrant the recommendation made.

DEPARTMENT OF AGRICULTURE.

Under the resolution creating it your committee have felt their chief duty to be that of gathering such information as would tend to place before the people and their Representatives in Congress the objects, aims, and purposes of the Department of Agriculture, the methods,

means, and agencies employed in furtherance of these; and upon the information thus obtained to make such recommendations as in the opinion of the committee would add to the usefulness of the department and the consequent advancement of the agricultural interests of the country.

With the question of the propriety of the establishment of such a department of the government your committee have nothing to do. The department exists. It will continue to exist. Hence it should be the object of the law-making power to so regulate, control, enlarge or limit its functions and facilities as will, in the wisdom of Congress, tend to produce the best results. To this end your committee has examined such witnesses as was thought could, by their practical, technical, or theoretical knowledge throw light upon the question.

The testimony collected is submitted herewith, and the conclusions based upon the same your committee beg leave to respectfully present, numbered and classed as follows:

RECOMMENDATIONS.

First. The erection of a new building (or additions to the existing structure) of sufficient size and capacity to accommodate the different divisions of the department and the large force of persons employed in each. Experience has demonstrated the inadequacy of the present building for the convenient or even economical transactions of the business of the department. The new building should embrace a hall or halls for the exhibition of agricultural implements which would not only subserve the purpose of informing our own people by practical observation as to the current improvements in labor-saving agricultural machinery, but would show to the intelligent visitor from foreign countries, in their most favorable light, the products of the skill of our mechanics and manufacturers, and thus send the fame of their achievements abroad. A natural result of this would be to create a demand for them, such as would inevitably lead to an increase in the wealth and prosperity of the country. This building should be fireproof, and so constructed as to furnish the best facilities for the transaction of the clerical and other business of the department.

Your committee report, as the result of their inquiry, that the different divisions of the department as now conducted are much restricted in their usefulness by the inadequacy, not to say niggardliness, of the appropriations. One of the chief of these is the division of chemistry. The importance of the proper conduct of this department of the science of agriculture can not be overestimated. With the facilities now at the command of this division, it is simply preposterous to expect that even a fraction of the required work can be properly done. As has been truly said, chemistry is the foundation and parent source of nearly all the knowledge that has led to the advancement of agriculture in the civilized nations of the globe. This division is now confined to one room of 20 feet square, with a basement of the same size, and a small closet. In view of the importance of this division to the usefulness of the department, your committee would recommend liberal appropriations for the same, and that ample space for a laboratory be provided in the new building.

The Division of Entomology is another of the branches of the Department that should be fostered by appropriations which would enable

the Department to keep abreast with the current dangers of the day resulting from the ravages of insects. The frequently recurring devastations of hitherto unknown insect pests is a matter that should command the careful attention of the most expert specialists, to the end that scientific methods for the extermination of the innumerable enemies of the farmer may be devised or discovered.

The collection of agricultural statistics is one of the most important of the different branches of the Department. The force now employed on that work your committee find wholly inadequate to the proper discharge of the vast duty assigned to it, and would, therefore, recommend an increase of the same.

One of the chief aims of the Department is the distribution, for experimental purposes, of seeds and plants of value to the farmers of the country. In order that the value of these may be tested to some extent before they are sent out, experimental gardens have been established and conducted upon the grounds of the Department, limited in extent and facilities. Your committee would recommend an increase and extension of the facilities for experiments in useful seeds and plants, and that the distribution of such product should be held strictly within the limits of the provisions of the Revised Statutes.

The Division of Botany, the importance of which to the agricultural interests of the country it would be useless to enlarge upon, also demands attention. The meager results thus far obtained by this division of the Department have been wholly due to the meagerness of the appropriations. Your committee would, therefore, recommend a generous increase in the appropriations for this purpose, and the establishment in connection with the Department of a complete classified and catalogued botanic garden. This would add much to the attractive features of the Department, and at the same time afford to students from all parts of the country facilities for the study of botany such as only a great national garden of this character can be expected to give.

Enlarged facilities for the Division of Microscopy and the establishment and maintenance of a division of forestry your committee deem essential to the full development of the functions of the Department, and would therefore recommend appropriate legislation for these purposes.

The frequent ravages of diseases peculiar to domestic animals of economic value, such as the epizootic among horses, the pleuro-pneumonia among cattle, the cholera among swine, and numerous other diseases, often developing into epidemics, entailing losses impossible to estimate, have been the subject of much thought among the statesmen and scientists of this and other countries, and various remedies have been suggested and methods devised for the suppression or amelioration of the evil. After giving the subject careful consideration your committee have reached the conclusion that the establishment of a permanent division in the Department of Agriculture to be known as the Division or Bureau of Animal Industry, the duty of which it shall be to take cognizance of the diseases named, collect statistics and information concerning them, and apply such remedies as may be authorized by law for their suppression or restriction, would be a long step toward a solution of the problem of prevention. The head of this division or bureau should be required by law to be a competent veterinary surgeon.

Comparisons made by your committee of the salaries paid employees of the Department of Agriculture with those of officers occupying similar positions and performing similar duties in other departments of the Government show that the salaries of the former rate far below those of the latter. Your committee can find no reason but usage for this discrimination, and would therefore recommend that the salaries of the officers of the Department of Agriculture be advanced to a point that will place them on a parity with the salaries of officers of equal grade in the other departments. In this connection your committee would also recommend that the disbursing officer of the Department of Agriculture be required to give a good and sufficient bond, and that his salary be increased to a rate of equality with that of the disbursing officers of other departments.

In conclusion, your committee would recommend that the Department of Agriculture be by law advanced to the full rank of other Departments of the Government, and that the head of this Department be made a member of the Cabinet.

ADDENDA.

The Botanic Garden of Paris, with 50 acres of trees, a menagerie, cabinets, and schools of botany and geology, and is a park worth mentioning and seeing, only cost $800,000 in two hundred and forty years.

S. H. SLAUGHT.

Expenditures for the Botanic Garden 1879 to 1907, inclusive.

Year.	Salaries Botanic Garden.	Improving Botanic Garden.	Improving buildings, Botanic Garden.
1879	$9,924.92	$4,000.00	$6,450.00
1880	9,991.00	4,850.00	5,495.00
1881	10,720.00	5,000.00	8,163.00
1882	11,694.62	4,997.80	7,287.60
1883	11,700.00	5,009.32	7,150.00
1884	11,700.00	10,000.00	.....
1885	11,699.81	7,499.96	2,999.66
1886	11,700.00	5,000.00	7,098.18
1887	12,776.62	4,988.61	5,476.71
1888	12,873.75	5,000.00	5,700.00
1889	12,873.65	4,998.21	3,999.97
1890	13,893.72	4,998.38	3,997.83
1891	13,893.75	5,000.00	3,000.00
1892	13,893.50	4,999.89	2,978.82
1893	13,893.75	4,999.71	5,000.00
1894	13,893.34	4,997.23	4,999.80
1895	13,893.75	5,000.00	5,000.00
1896	12,745.39	4,999.15	4,999.76
1897	13,893.00	5,117.21	5,500.00
1898	13,893.18	3,981.75	5,484.09
1899	13,506.40	4,701.22	5,500.00
1900	13,892.75	6,100.00	5,998.04
1901	13,893.65	4,483.79	4,406.96
1902	13,892.99	5,500.00	6,500.00
1903	13,893.48	3,998.15	5,490.39
1904	14,393.66	8,816.91	6,909.07
1905	14,392.52	5,001.58	6,467.70
1906	14,386.32	5,037.27	6,951.53
1907	16,367.27	6,447.94	6,995.83
Total	380,166.79	155,524.08	154,999.94
			155,524.08
			380,166.79
Total from 1879 to 1907	.....	.....	690,690.81
Total from 1850 to 1878	.....	.....	554,337.88
Total from 1850 to 1907	.....	.....	1,245,028.69

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 496.

ADDITIONAL ESTIMATES OF APPROPRIATIONS FOR THE PAY DEPARTMENT, UNITED STATES ARMY, FOR THE FISCAL YEAR ENDING JUNE 30, 1909.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A COPY OF A COMMUNICATION FROM THE ACTING SECRETARY OF WAR SUBMITTING ADDITIONAL ESTIMATES OF APPROPRIATIONS FOR THE SERVICE OF THE FISCAL YEAR ENDING JUNE 30, 1909.

MAY 20, 1908.—Referred to the Committee on Military Affairs and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 20, 1908.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Acting Secretary of War, of this date, submitting additional estimates of appropriations for the service of the fiscal year ending June 30, 1909, as follows:

Pay of Military Academy	$468
Miscellaneous Items and Incidental Expenses, Military Academy	2,500

Respectfully,

GEO. B. CORTELYOU, *Secretary.*

The PRESIDENT OF THE SENATE.

WAR DEPARTMENT,
Washington, May 20, 1908.

SIR: I have the honor to forward herewith, for transmission to Congress, additional estimates of appropriations required for the service for the fiscal year ending June 30, 1909, as follows:

Pay of Military Academy	$468.00
Miscellaneous items and incidental expenses, Military Academy	2,500.00
Total	2,968.00

These estimates are in addition to the amounts estimated for and included in the annual estimates submitted to Congress for the fiscal year ending June 30, 1909, and the necessity for submission is fully set forth in the footnotes accompanying the estimates.

Very respectfully,

ROBERT SHAW OLIVER,
Acting Secretary of War.

The SECRETARY OF THE TREASURY.

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909 by the Pay Department, United States Army.

Detailed objects of expenditures, and explanations.	Estimated amount which will be required for each detailed object of expenditure.	Total amount to be appropriated under each head of appropriation.	Amount appropriated for the current fiscal year ending June 30, 1908
WAR DEPARTMENT.			
MILITARY ACADEMY.			
Pay of Military Academy—			
For extra pay of one sergeant of engineers, acting first sergeant (R. S., p. 222, sec. 1280)	$108.00		
For extra pay of one mess sergeant of engineers (R. S., p. 222, sec. 1280)	72.00		
For extra pay of two cooks of engineers, at $12 per month each (R. S., p. 222, sec. 1280)	288.00	$468.00	$515,495.4
NOTE.—The detachment of engineers at the Military Academy is made up of details from the twelve companies of engineers in the Army. Its strength is 96 men, larger than a troop of cavalry or company of infantry, and nearly as large as a company of coast artillery. For administrative purposes the detachment must have an acting first sergeant, and for the conduct of its mess, a mess sergeant and two cooks; men of the detachment are now performing these duties, and receive no compensation therefor. This extra pay is given one sergeant who is performing the duties of first sergeant, the pay of that grade provided under the act of Congress, approved May 11, 1908, and similarly the pay authorized for a mess sergeant and cooks to the sergeant and two first-class privates performing these duties. Not being of the twelve companies of engineers as authorized by law, there is no authority to appoint nor pay these men as first sergeant, mess sergeant, and cooks, respectively; and the only way to compensate them for the work performed is to allow extra pay, which, added to their regular pay, will give them the amounts provided by law for similar positions, as in other organizations. R. L. HOWZE, *Lieut. Col. U. S. Army, Actg. Supt. U. S. Military Academy.*			
Miscellaneous items and incidental expenses, Military Academy:			
For policing the barracks, bath-houses, supplying light and plain furniture to cadet barracks (Mar. 2, 1907, vol. 34, pp. 1971–1972, sec. 1)	.....	2,500.00	54,985.
NOTE.—When the estimates for the next fiscal year were prepared (August, 1907) the new cadet barracks had not been completed nor had there been any experience with caring for the new cadets from March 1 instead of June 15, as formerly. The new barracks containing eight divisions were occupied about February 20, 1908, and the new cadets reported on March 1, 1908. The old cadet barracks containing twelve divisions and the north wing of the new barracks containing four divisions are now being erected. It is found that one man (policeman) is required for the care of two divisions (the buildings are four stories high and each division contains 16 rooms).			

Estimates of appropriations required for the service of the fiscal year ending June 30, 1909, by the Pay Department, United States Army—Continued.

Detailed objects of expenditures, and explanations.	Estimated amount which will be required for each detailed object of expenditure.	Total amount to be appropriated under each head of appropriation.	Amount appropriated for the current fiscal year ending June 30, 1908.
WAR DEPARTMENT—Continued.			
MILITARY ACADEMY—continued.			
This requires 10 policemen now and will require two more when the new wing is finished. In addition four men are required to look after the lavatories and bathrooms, etc.; a total of fourteen men are employed in this connection. They should receive $50 per month each. The equipment of cadet rooms with plain furniture (chairs, tables, lockers, etc.) is necessary, which this appropriation must provide. The pay for fourteen policemen, $8,400. Equipment of 112 rooms in the new barracks and repair and replacement of that in the old barracks and cost of lighting these two buildings for the year is estimated at $3,600. The original estimate is $9,500, which is $2,500 below amount required.			
R. L. HOWZE, *Lieut. Col., U. S. Army,* *Acting Superintendent U. S. Military Academy.*			
C. H. WHIPPLE, *Paymaster-General, U. S. Army.*			
OFFICE OF THE PAYMASTER-GENERAL, *War Department, May 19, 1908.*			

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 497.

CLAIMS ALLOWED UNDER APPROPRIATIONS EXHAUSTED.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A SCHEDULE OF CLAIMS ALLOWED BY THE ACCOUNTING OFFICERS OF THE TREASURY UNDER APPROPRIATIONS, THE BALANCES OF WHICH HAVE BEEN EXHAUSTED OR CARRIED TO THE SURPLUS FUND UNDER THE PROVISIONS OF SECTION 5 OF THE ACT OF JUNE 20, 1874, AMOUNTING TO $264,375.37.

MAY 20, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 20, 1908.

SIR: In compliance with the resolution of the Senate of the 18th instant—

> That the Secretary of the Treasury be, and he is hereby, directed to transmit to the Senate a schedule of claims allowed by the accounting officers of the Treasury under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of section five of the act of June twentieth, eighteen hundred and seventy-four,

I have the honor to transmit herewith lists of such claims not heretofore transmitted to Congress, amounting to $264,375.37.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*

The PRESIDENT OF THE SENATE.

Allowed by the Auditor for the Treasury Department.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY DEPARTMENT.			
	INTERNAL REVENUE.			
3616	Frank Bloemer	Payment of judgments against internal-revenue officers (certified claims).		$68.75
3617	J. W. Bauer	do		68.75
3618	C. Caudel	do		68.62
3619	Samuel Goldsmith	do		52.06
3620	S. Weisbach	do		48.20
3621	I. Schafer	do		157.67
3628	James Grier, doing business as A. and J. Grier.	do		856.95
3630	John W. Kleier	do		68.32
3631	W. J. Scheiber	do		68.75
3632	Oscar E. Rehm	do		68.62
3633	Frank E. Muth	do		68.62
3634	C. J. Finnegan	do		68.75
3650	E. H. Gregg	do		30.00
3651	J. Hofmeister	do		60.35
3652	Grimmer and Windhorst	do		60.35
3653	Daniel Scherer	do		60.35
3654	James Weaver, surviving partner of Weaver Brothers.	do		59.45
3659	W. H. Kunker	do		119.12
3660	J. M. Haragan	do		102.13
3661	John Dupere	do		83.85
3662	George Hartlage	do		62.70
3663	C. W. Hall	do		45.97
3664	G. Schlang	do		113.63
3665	J. A. Hess	do		68.79
3666	Ben. H. Schrader	do		86.74
	Total			2,610.49

RECAPITULATION OF CLAIMS ALLOWED BY THE AUDITOR FOR THE TREASURY DEPARTMENT.

Treasury Department:
Internal revenue—
Payment of judgments against internal-revenue officers (certified claims) $2,610.49

Total Treasury Department 2,610.49

Allowed by the Auditor for the War Department.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	WAR DEPARTMENT.			
	MILITARY ESTABLISHMENT.			
15534	Applebaugh, John E	Pay, etc., of the Army (certified claims).	a 1905	$2.93
17801	Auaya, Francisco	do	a 1905	3.92
17279	Barton, Swinfield E	do	a 1905	4.17
17816	Burns, Farrel	do	a 1905	11.07
17608	Coffee, James	do	a 1905	2.12
17605	Corrigan, Thomas	do	a 1905	83.38
17723	Davis, John B	do	a 1905	2.25
17724	Gibson, John	do	a 1905	17.66
17725	Harris, William C	do	a 1905	.18
17803	Herrick, James P	do	a 1905	3.05
17414	Hook, Joseph N	do	a 1905	1.24
17417	Ingles, Henry	do	a 1905	1.55
17603	Johnson, Emil K	do	a 1905	7.43

a And prior years.

Allowed by the Auditor for the War Department—Continued.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	WAR DEPARTMENT—Con.			
	MILITARY ESTABLISHMENT—CON.			
17487	Kefes, Jakob	Pay, etc., of the Army (certified claims.)	a 1905	$160.68
17415	Kline, Edwin N	do	a 1905	6.55
17722	Liddy, Michael	do	a 1905	4.76
17607	Macon, Alex	do	a 1905	.26
17488	Mehrmann, Christopher G	do	a 1905	.98
17809	Nabaum, William	do	a 1905	3.90
17604	O'Connell, James H	do	a 1905	13.35
17601	Olen, William F	do	a 1905	1.64
17606	Omohundro, Samuel S	do	a 1905	78.23
17815	Peart, Jesse	do	a 1905	2.40
17478	Potter, William A	do	a 1905	2.40
17266	Rice, Walter L	do	a 1905	4.28
17602	Schnable, Samuel F	do	a 1905	12.84
17721	Sizemore, Elijah E	do	a 1905	1.86
17817	Smith, James H	do	a 1905	4.54
17418	Snowden, Joseph	do	a 1905	.35
17280	Spooner, Edmund D	do	a 1905	58.06
17416	Torres, Segundo	do	a 1905	2.06
17806	Wilson, Ed R	do	a 1905	27.05
17919	Carroll, Joseph	do	a 1905	29.33
17991	Connally, Austin	do	a 1905	1.21
17917	Corbin, Lee Roy	do	a 1905	1.51
18109	Sleeth, Alvin	do	a 1905	10.84
18110	Walker, Edward	do	a 1905	.52
17918	Wilson, James, alias Chas. Glessing	do	a 1905	2.33
18108	Wooden, William D	do	a 1905	.86
18148	Carroll, Garfield	do	a 1905	2.49
18146	Cheek, William D	do	a 1905	2.40
18203	Christians, Joseph	do	a 1905	1.73
18244	Dorwin, C. T	do	a 1905	2.40
18150	Garrington, James, or James A	do	a 1905	49.15
18151	Hamilton, William	do	a 1905	2.20
18207	Hart, Alfred E	do	a 1905	1.82
18152	Kump, Amos	do	a 1905	19.94
18208	Landis, Roger L	do	a 1905	.47
18204	Lawhorn, William P	do	a 1905	1.54
18201	Mayhugh, Joseph A	do	a 1905	2.28
18206	Metcalf, William W	do	a 1905	.25
18209	Moore, Jacob	do	a 1905	8.08
18149	Nelms, Laton	do	a 1905	.26
18205	Pilcher, Charles H	do	a 1905	.39
18147	Schutters, Floyd	do	a 1905	.48
18202	Walcott, Charles	do	a 1905	1.50
18245	Williamson, Foster A	do	a 1905	2.40
18373	Gilmore, James	do	a 1905	15.58
18378	Jincks, R. A	do	a 1905	8.87
18376	Martin, Thomas	do	a 1905	.99
18374	Mize, Charles I	do	a 1905	4.27
18372	Ferkins, Albert J	do	a 1905	2.27
18377	Sutton, John	do	a 1905	2.61
18375	Todd, William	do	a 1905	2.23
	Total			695.34
4249	Pennsylvania Railroad Co	Encampment and maneuvers, organized militia (certified claims.)	1905	203.14
4378	Southern Railway Co	do	1905	50.21
	Total			253.35
15584	Applebaugh, John E	Subsistence of the Army (certified claims.)	a 1905	44.75
17606	Omohundro, Samuel S	do	a 1905	9.25
18145	Williams, Ellsworth	do	a 1905	23.00
	Total			77.00
4249	Pennsylvania R. R. Co	Transportation of the Army and its supplies (certified claims).	1905	47.34
4251	Chicago, Milwaukee and St. Paul Rwy. Co.	do	1905	.98
4378	Southern Rwy. Co	do	1905	11.76
4446	Chicago, St. Paul, Minneapolis, and Omaha Rwy. Co.	do	1905	[illegible]

a And prior years.

Allowed by the Auditor for the War Department—Continued.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	WAR DEPARTMENT—Con.			
	MILITARY ESTABLISHMENT—con.			
4448	Northern Pacific Rwy. Co	Transportation of the Army and its supplies (certified claims).	1903	$110.41
4476	Astoria and Columbia River R. R. Co.	do	1905	72.75
	Total			388.23
17490	Croxton, Thomas	Pay, transportation, services, and supplies of Oregon and Washington volunteers in 1855 and 1856 (certified claims).		86.69
	Total War Department			1,500.51

RECAPITULATION OF CLAIMS ALLOWED BY THE AUDITOR FOR THE WAR DEPARTMENT.

War Department:
Military establishment, as follows—

Pay, etc., of the Army (certified claims)	$695.34
Encampment and maneuvers, organized militia (certified claims)	253.35
Subsistence of the Army (certified claims)	77.00
Transportation of the Army and its supplies (certified claims)	388.23
Pay, transportation, services, and supplies of Oregon and Washington volunteers in 1855 and 1856 (certified claims)	86.69
Total, War Department	1,500.16

Allowed by the Auditor for the Navy Department.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	NAVY DEPARTMENT.			
	NAVAL ESTABLISHMENT.			
3684	Alexander, Solomon A	Pay of the Navy (certified claims).	1848	$8.00
3873	Burke, James J	do	1898-99	44.00
3695	Goldsborough, W	do	1904	44.46
3785	Jenney, Wm	do	1900-1904	2,143.75
3773	Norris, John A	do	1903	97.22
3874	Sullivan, James	do	1904	1.27
3941	Garrett, L. M	do	1900-1901	122.66
3943	Jenson, H. N	do	1900-1903	500.70
3942	McLean, Ridley	do	1900-1902	210.56
3923	Poundstone, H. C	do	1900-1902	240.00
3910	Shafer, W. R	do	1903-4	18.00
3964	Althouse, Adelbert	do	1902-1904	182.39
3960	Douglas, James R	do	1865	102.32
3962	Key, A. L	do	1902-3	128.89
3961	Potts, T. M	do	1904	26.73
3963	Evans, G. R	do	1902-3	193.33
3979	Blue, Victor	do	1900-1904	398.20
3992	Dayton, John H	do	1904	131.45
3978	Galligan, Thomas F., alias Thomas Gorman.	do	1865	31.94
4006	Wihtol, Edward	do	1904	6.47
4016	Ammen, U. G	do	1903	22.80
	Total			4,705.14
3750	Herr, Robert W	Pay, miscellaneous (certified claims).	1904	3.52
4005	George G. Fox Co	Contingent, Navy (certified claims).	1902	76.00

Allowed by the Auditor for the Navy Department—Continued.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	NAVY DEPARTMENT—Cont'd.			
	NAVAL ESTABLISHMENT—cont'd.			
3816	Clancy, Michael	Pay of Marine Corps (certified claims).	1901-2	$3.84
3839	Conway, Thomas	do	1898-1900	11.27
3840	Doran, William E. J	do	1905	127.44
3838	Foley, James J	do	1898-1900	10.64
3777	Howard, John J	do	1905	.77
3890	Johnson, Peter M A	do	1899-1901	146.82
3746	Kendall, James F	do	1898-1900	19.82
3891	Wood, John D	do	1903-1905	16.06
3995	McLaughlin, John Cyrus	do	1898-1900	11.39
4017	McConnell, F. C	do	1905	33.60
	Total			381.65
3751	Abbey, Herbert J	Contingent, Marine Corps (certified claims).	1902-1904	120.75
3842	Ford, David L	do	1898	16.00
3987	Clark, Albert M	do	1904	10.50
3997	Hastings, Alton P	do	1904-5	17.50
3986	Pohle, Maximilian L	do	1885-1888	53.90
3988	Smith, Lester E	do	1904-5	80.85
3998	Ubel, Charles	do	1896-1903	443.45
	Total			742.95
3703	Hirsch, David	Gunnery exercises, Bureau of Navigation (certified claims).	1905	21.75
4004	General Electric Co	Equipment of vessels, Bureau of Equipment (certified claims).	1903	6,234.62
3976	Monongahela Iron and Steel Co	Construction and repair, Bureau of Construction and Repair (certified claims).	1905	2,953.56
3820	Madden, John J	Indemnity for lost property, naval service, act Mar. 2, 1895 (certified claims).	1908	61.64
3829	Thomas, Chauncey	do	1907	441.65
	Total			503.29
3806	Wendt, William	Destruction of clothing and bedding for sanitary reasons (certified claims).	1908	6.95
3846	Dagwell, Chas. M., or Chas. Dogwell.	Enlistment bounties to seamen (certified claims).	1865	33.34
3772	Feagan, Jordan, alias Jordan Patterson.	do	1865	100.00
3775	Mullen, Stephen	do	1865	33.33
3918	Bell, Samuel D., or Samuel	do	1865	100.00
3919	Wells, Wade, alias Wade Wadkins.	do	1866	41.67
	Total			308.34
	Total Navy Department			15,937.77

RECAPITULATION OF CLAIMS ALLOWED BY THE AUDITOR FOR THE NAVY DEPARTMENT.

Navy Department:

Naval establishment, as follows—

Pay of the Navy (certified claims)	$4,705.14
Pay, miscellaneous (certified claims)	3.52
Contingent, Navy (certified claims)	76.00
Pay, Marine Corps (certified claims)	381.65
Contingent, Marine Corps (certified claims)	742.95
Gunnery exercises, Bureau of Navigation (certified claims)	21.75
Equipment of vessels, Bureau of Equipment (certified claims)	6,234.62
Construction and repair, Bureau of Construction and Repair (certified claims)	2,953.56
Indemnity for lost property, naval service, act March 2, 1895 (certified claims)	503.29
Destruction of clothing and bedding for sanitary reasons (certified claims)	6.95
Enlistment bounties to seamen (certified claims)	308.34
Total Navy Department	15,937.77

LOWED UNDER APPROPRIATIONS EXHAUSTED.

llowed by the Auditor for the Interior Department.

	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	INTERIOR DEPARTMENT.			
	CIVIL.			
3657	Geddes, Alfred L.	Surveying the public lands (certified claims).	1904	$2,156.72
3697	Clark, Benjamin F.	do	1904, 1905	6,281.04
3698	Utter, Darwin A., and Jonta B. Marcellus.	do	1905	103.74
3731	Perkins, Henry C.	do	1905	323.00
3732	Jessen, Adolphe, and Edgar F. Harmston.	do	1900	2,942.15
3765	Roberts, Charles E.	do	1905	243.69
3768	Anderson, Nephi P.	do	1899, 1901	2,121.47
3811	Page, Ernest R., and Newton Orr.	do	1905	400.00
	Total			14,571.81
	INDIANS.			
75035	Johnson, Herbert H.	Incidentals in New Mexico, 1907.	1907	21.01
5052	Gilchrist, Wyatt, estate of	Payment to estate of Wyatt Gilchrist, deceased, for stock stolen from him by Comanche Indians in 1866 (certified claims.)		a 300.00
	Total Indians			321.01
	Total Interior Department			14,892.82

a As per decision of the Comptroller of the Treasury of May 11, 1908.

RECAPITULATION OF CLAIMS ALLOWED BY THE AUDITOR FOR THE INTERIOR DEPARTMENT.

Interior Department:	
Civil—	
Surveying the public lands (certified claims)	$14,571.81
Indians—	
Incidentals in New Mexico, 1907	21.01
Payment to estate of Wyatt Gilchrist, deceased, for stock stolen from him by Comanche Indians in 1866 (certified claims)	300.00
	321.01
Total Interior Department	14,892.82

Allowed by the Auditor for the State and other Departments.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	TREASURY DEPARTMENT.			
	GOVERNMENT IN THE TERRITORIES.			
1153	State of Oklahoma	Common schools, State of Oklahoma.		a$225,409.84
	DEPARTMENT OF AGRICULTURE.			
1122	Anderson, Charles H.	Protection of forest reserves (certified claims).	1905	60.00

a Interest at 3 per cent per annum on the sum of $5,000,000 appropriated by section 7 of the act of June 16, 1906 (34 Stat. L., p. 267), from June 16, 1906, to Dec. 17, 1907, in accordance with the decision of the Comptroller of the Treasury dated May 11, 1908.

Allowed by the Auditor for the State and other Departments—Continued.

No. of certificate or claim.	Name of claimant.	Appropriation from which payable.	Fiscal year in which the expenditure was incurred.	Amount.
	DEPARTMENT OF COMMERCE AND LABOR.			
1118	Manning, Maxwell, and Moore...	Repairs and incidental expenses of light-houses (certified claims).	1903	$42.75
	DEPARTMENT OF JUSTICE.			
	UNITED STATES COURTS.			
4654	Harsha, W. S	Fees of clerks, United States courts, 1907.	1907	7.60
4554	Locke, E. O	do	1907	1.80
4657	Markham, T. J	do	1907	10.00
4516	Mathews, A. G	do	1907	241.93
4655	Norris, J. H	do	1907	2.30
	Total			263.63
4785	Mottley, Charles P	Fees of commissioners, United States courts (certified claims).	1904, 1905	31.40
4858	Apache County, Ariz	Prosecution of Indians in Arizona, act Mar. 4, 1907.		3,626.06
	Total Department of Justice.			3,921.09

RECAPITULATION OF CLAIMS ALLOWED BY THE AUDITOR FOR THE STATE AND OTHER DEPARTMENTS.

Treasury Department:	
Territorial governments, as follows—	
Common schools, State of Oklahoma	$225,409.84
Department of Agriculture:	
Protection of forest reserves (certified claims)	60.00
Department of Commerce and Labor:	
Repairs and incidental expenses of light vessels (certified claims)	42.75
Department of Justice:	
Fees of clerks, United States courts, 1907	263.63
Fees of commissioners, United States courts (certified claims)	31.40
Prosecution of Indians in Arizona (Apache County), act March 4, 1907	3,626.06
	3,921.09
Grand total	229,433.68

SUMMARY OF CLAIMS.

Treasury Department:		
Internal revenue	$2,610.49	
Territorial governments	225,409.84	
		$228,020.33
War Department:		
Military establishments		1,500.61
Navy Department:		
Naval establishments		15,937.77
Interior Department:		
Civil	14,571.81	
Indians	321.01	
		14,892.82
Department of Agriculture:		
Miscellaneous		60.00
Department of Commerce and Labor:		
Miscellaneous		42.75
Department of Justice:		
United States courts		3,921.09
Grand total		264,375.37

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 498.

JUDGMENTS OF COURT OF CLAIMS REQUIRING APPROPRIATION.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF MAY 18, 1908, LISTS OF JUDGMENTS OF THE COURT OF CLAIMS, AMOUNTING TO $23,892.24.

MAY 20, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 20, 1908.

SIR: In compliance with the resolution of the Senate of the 18th instant, I have the honor to transmit herewith lists of judgments of the Court of Claims, amounting to $23,892.24, which have not been heretofore presented to Congress, and which require an appropriation for their payment, as follows:

Under the War Department	$23,021.34
Under the Navy Department	691.47
Under the Post-Office Department	54.43
Under the Department of Justice	125.00
Total	23,892.24

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

Judgments rendered by the Court of Claims.

No.	Name of claimant.	Date of judgment.	Amount.	When presented for payment.	When payable if not appealed.	Nature of claim.
	WAR DEPARTMENT.					
22944	Marshall M. Cloud	1907. Dec. 9	$1,878.25	1908. Jan. 9	1908. Mar. 8	Pay as officer U. S. Army.
28159	The Alaska Commercial Co., of San Francisco.	1908. May 11	5,000.00	May 13	Aug. 9	Compensation for loss of barge *Maude* while in service of United States, under contract, at Alaska.
28185	William T. McGurrin	Mar. 30	58.34	Apr. 27	June 28	Pay for exercising higher command.
27441	Peter C. Hains	May 11	481.94	May 18	Aug. 9	Compensation as Army officer acting as member of Isthmian Canal Commission.
29907	Charles E. Ellicott and John B. Norris, copartners, trading as Ellicott Machine Co.	May 18	10,000.00	May 19	Aug. 16	Under contract with Isthmian Canal Commission for steel dump barges.
29681	Simons-Myrant Co., a corporation.	....do...	957.51	....do...	....do...	Under contract with Quartermaster's Department for work on reservoir at Fort Moultrie, S. C.
28908	George C. Rickards	1907. Apr. 8	519.45	1907. Dec. 7	1907. July 7	Extra pay to volunteers, war with Spain.
27444	Joseph Bobleter	1908. Mar. 9	320.83	1908. Apr. 27	1908. June 7	Do.
26071	Clyde B. Parker	Mar. 16	105.00	....do...	June 14	Do.
25554	Charles N. Pettit	....do...	36.00	....do...	....do...	Do.
25225	Wright G. Campbell	....do...	150.00	....do...	....do...	Do.
26798	Charles W. Bard	....do...	31.20	....do...	....do...	Do.
29164	George H. Brown	....do...	31.20	....do...	....do...	Do.
27859	Bertie McVey, widow of James R. McVey, deceased.	Mar. 23	26.00	....do...	June 21	Do.
28680	Daniel Hundley, father of John W. Hundley, deceased.	....do...	11.44	....do...	....do...	Do.
25714	Howard N. Geyer	Mar. 30	108.00	....do...	June 28	Do.
23697	Walter G. Penfield	1907. Nov. 11	27.40	May 5	Feb. 9	Do.
29370	Robert T. Shindler	1908. May 4	116.67	May 9	Aug. 2	Do.
28909	John W. Cox, father of William H. Cox, deceased.	....do...	26.00	....do...	....do...	Do.
24710	James C. Baker	May 7	291.67	....do...	Aug. 5	Do.
25678	Harry D. Blasland	....do...	150.00	....do...	....do...	Do.
28215	Robert W. Douglas	....do...	31.20	....do...	....do...	Do.
30013	William T. Littebrant	....do...	200.00	....do...	....do...	Horse lost in the military service.
29164	Harry E. Root	....do...	31.20	....do...	....do...	Extra pay to volunteers, war with Spain.
29164	Henry Lempke	....do...	31.20	....do...	....do...	Do.
26620	Nathaniel G. Valentine	....do...	110.84	....do...	....do...	Do.
24890	Fred Brewer	....do...	60 00	....do...	....do...	Do.
28156	Frank F. McCrea	....do...	150.00	....do...	....do...	Do.
26608	Adam E. Ferguson	....do...	31.20	....do...	....do...	Do.
29173	William D. Stine	....do...	31.20	....do...	....do...	Do.
25711	William C. Eible	....do...	15.60	....do...	....do...	Do.
28889	Ray E. Hiscox	....do...	31.20	....do...	....do...	Do.
28188	Nathan C. Castle	....do...	15.60	....do...	....do...	Do.
25798	Harry J. Fitts	....do...	15.18	....do...	....do...	Do.
29164	Alexander Macdonald	....do...	36.00	....do...	....do...	Do.
27823	Hugh Monahan	....do...	15.60	....do...	....do...	Do.
28959	Andrew J. Younger	....do...	31.20	....do...	....do...	Do.
26695	George W. Hinkle	....do...	31.20	....do...	....do...	Do.
28194	Joseph L. Uffenheimer	....do...	15.60	....do...	....do...	Do.
29164	Louis Davis	....do...	31.20	....do...	....do...	Do.
29164	George A. Fisher	....do...	31.20	....do...	....do...	Do.
28764	John E. Tyler, jr	....do...	55.20	....do...	....do...	Do.
25745	Robert T. Macklin	May 18	18.10	May 18	Aug. 16	Do.
29115	Laura Gould, mother of Milon R. Gould, deceased.	....do...	233.34	....do...	....do...	Do.
29160	Hamilton B. McKinley	....do...	116.67	....do...	....do...	Do.
21239	Harold W. Armstrong	....do...	116.67	....do...	....do...	Do.

Judgments rendered by the Court of Claims—Continued.

No.	Name of claimant.	Date of judgment.	Amount.	When presented for payment.	When payable if not appealed.	Nature of claim.
		1908.		1908.	1908.	
23461	Charles E. Brines	May 18	$116.67	May 18	Aug. 16	Extra pay to volunteers, war with Spain.
24219	Claud M. Henry	....do	125.00	....do	....do	Do.
24970	Guy G. Bailey	....do	353.34	....do	....do	Difference of pay as assistant surgeon, U. S. Volunteers.
25226	John W. Magruder	....do	150.00	May 19	....do	Extra pay to volunteers, war with Spain.
28023	Alexander J. Reeder	....do	18.00	....do	....do	Do.
28525	Frank Dorward	....do	31.20	....do	....do	Do.
28995	Daniel A. Stearns	....do	208.33	....do	....do	Do.
26715	Ralph C. Hudson	....do	43.20	....do	....do	Do.
26714	Stephen W. Clancy	....do	31.20	....do	....do	Do.
26714	Mrs. Jennie Walsh, widow of John Walsh, deceased, alias John Newell, deceased.	....do	31.20	....do	....do	Do.
29140	Robert L. Durham	May 19	150.00	....do	Aug. 17	Do.
	Total War Department.		23,021.34			
	NAVY DEPARTMENT.					
28123	William G. Miller, judgment under mandate of Supreme Court United States—interest on this judgment, at 4 per cent per annum, from May 19, 1906, to Feb. 7, 1908.		6.47			Pay as officer U. S. Navy.
		1908.		1908.	1908.	
26991	Richard H. Leigh	Apr. 20	685.00	Apr. 23	July 19	Do.
	Total Navy Department.		691.47			
	POST-OFFICE DEPARTMENT.					
		1908.		1908.	1908.	
29954	C. V. Reynolds	May 18	7.78	May 19	Aug. 16	Pay as postal clerk.
29954	Lyman J. Levey	....do	4.44	....do	....do	Do.
29954	Merrick Smith	....do	5.55	....do	....do	Do.
29954	George M. Craw	....do	2.77	....do	....do	Do.
29954	Fred J. Mathwig	....do	6.67	....do	....do	Do.
29954	Revillo H. Mason	....do	4.44	....do	....do	Do.
29954	Wilson E. McCullough	....do	6.67	....do	....do	Do.
29954	Harry F. Moore	....do	5.00	....do	....do	Do.
29954	Amos J. Quinn	....do	6.67	....do	....do	Do.
29954	James G. Kropacek	....do	4.44	....do	....do	Do.
	Total Post-Office Department.		54.43			
	DEPARTMENT OF JUSTICE.					
		1908.		1908.	1908.	
30017	William F. Mitchell	May 4	125.00	May 5	Aug. 2	Fees of clerks, U. S. courts.
	Aggregate of judgments.		23,892.24			

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 499.

JUDGMENT OF CIRCUIT COURT FOR SOUTHERN DISTRICT OF GEORGIA AGAINST UNITED STATES AND IN FAVOR OF WRIGHT, WILLIAMS AND WADLEY.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF MAY 18, 1908, THE RECORD OF A JUDGMENT RENDERED AGAINST THE UNITED STATES BY THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, UNDER THE ACT OF MARCH 3, 1887, AS SUBMITTED BY THE ATTORNEY-GENERAL, WHICH REQUIRES FOR ITS PAYMENT AN APPROPRIATION AMOUNTING TO $222.54.

MAY 20, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 20, 1908.

SIR: In compliance with the resolution of the Senate of the 18th instant, I have the honor to transmit herewith the record of a judgment rendered against the United States by the circuit court of the United States for the southern district of Georgia, under the act of March 3, 1887 (1 Supp. R. S., 559), as submitted by the Attorney-General, and which requires an appropriation for its payment as follows:

Under the War Department $222.54

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF JUSTICE,
Washington, May 19, 1908.

SIR: In addition to the judgments of the circuit and district courts of the United States, rendered under the provisions of the act of March 3, 1887 (1 Supp. R. S., 559), heretofore transmitted to you for certification, I send you herewith a copy of a judgment of the United States circuit court for the southern district of Georgia, dated March 11, 1907, in favor of Wright, Williams and Wadley, and have the honor to request that the same be certified to Congress for appropriation of the principal sum named therein and costs, as well as the 4 per cent interest provided in section 10 of the act of March 3, 1887, supra.

Respectfully,

M. D. PURDY,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

Name.	Judgment.	Costs.	Date of judgment.	Nature of claim.	Exhibit.
Wright, Williams and Wadley.	$194.74	$27.80	Mar. 11, 1907	Construction military road, Chickamauga Park, Georgia; War Department.	1

EXHIBIT No. 1.

WRIGHT, WILLIAMS AND WADLEY *v.* UNITED STATES, No. 1492.

From all of which the court is of the opinion and doth so adjudge and decree that petitioners are entitled to recover of defendant the amount of the claim as set forth in their petition for increasing the width of the chert roads at certain places under and in accordance with the instructions of the officer of the defendant, in charge of the work, which claim amounts to the sum of one hundred and ninety-four dollars and seventy-four cents ($194.74), and that petitioners are entitled to interest on said sum at the legal rate of interest under the laws of Georgia, being seven per cent per annum from November 1st, 1904, the date when, according to the proof, said claim was due and payable, up to the date of the entry of this judgment, which interest amounts to the sum of $30.76, making the total sum which petitioners are entitled to recover of defendant as aforesaid, the sum of two hundred twenty-five and 50/100 dollars ($225.50). It is further adjudged and decreed that petitioners are entitled to recover of defendant all the legal costs of the cause.

March 11, 1907, circuit court southern district of Georgia.

Costs, $27.80.

It being stipulated and agreed in writing, between the parties to this cause, signed by the respective counsel of record and filed with the record in the cause, that in the framing of the final judgment and decree therein there was by an oversight erroneously included therein an item of $30.76, being interest at seven per cent from November 1, 1904, to the date of the entry of such judgment and decree, on the principal sum adjudged against the United States, and that said judgment and decree should be corrected by striking said item therefrom.

It is now thereupon considered, adjudged, and decreed by the court that the said final judgment and decree in said cause be, and the same is hereby, corrected by striking therefrom the said item of $30.76, interest on the principal sum of $194.74 from November 1st, 1904, up to the date of the entry of such judgment.

This May 15, 1908.

EMORY SPEER, *U. S. Judge.*

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 500.

JUDGMENTS RENDERED BY COURT OF CLAIMS IN INDIAN DEPREDATION CASES.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF MAY 18, 1908, A LIST OF JUDGMENTS RENDERED BY THE COURT OF CLAIMS IN FAVOR OF CLAIMANTS IN INDIAN DEPREDATION CASES, AMOUNTING TO $29,645 (REQUIRING AN APPROPRIATION FOR THEIR PAYMENT.)

MAY 20, 1908.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 20, 1908.

SIR: In compliance with the resolution of the Senate of the 18th instant I have the honor to transmit herewith a list of judgments rendered by the Court of Claims in favor of claimants in Indian depredation cases, amounting to $29,645, as submitted by the Attorney-General, and which require an appropriation for their payment.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF JUSTICE,
Washington, May 19, 1908.

SIR: I have the honor to transmit herewith, to be certified to Congress for appropriation, a list of judgments by the Court of Claims in

favor of claimants in Indian depredation cases, for which no appropriation has heretofore been made.

This list is supplementary to that transmitted to you on April 21, 1908.

Respectfully,

M. D. PURDY,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

List of judgments in Indian depredation claims in favor of claimants.

In whose favor rendered.	Amount claimed.	Amount of judgment.	Date of judgment.
Miley A. Hale, widow and survivor in community, Harvey B. Hale, deceased	$400.00	$300.00	May 4, 1908
Ramon Luna, administrator Ramon Luna, deceased	3,825.00	3,200.00	May 11, 1908
Jose M. Garcia, administrator Juan Garcia, deceased	6,575.00	840.00	Do.
John W. Brown	1,450.00	850.00	Do.
John L. Hunter, administrator James M. Hunter, deceased	625.00	350.00	Do.
Do	5,800.00	3,270.00	Do.
John B. Pollard and James T. Pollard, heirs of Royston W. Pollard, deceased	790.00	250.00	Do.
Daniel W. Squyres	1,115.00	715.00	Do.
Keellen Williams	1,250.00	75.00	Do.
Creed Taylor	1,750.00	1,190.00	Do.
Jonathan L. Keith	800.00	580.00	May 18, 1908
Elmer E. Veeder, administrator Juan Sisneros, deceased	840.00	375.00	Do.
Ramon Sisneros, administrator Jose Maria Sisneros, deceased	3,654.00	1,880.00	Do.
Helen B. Woodward, administratrix Mont Woodward, deceased	3,268.00	2,015.00	Do.
Lizzie V. Brown, executrix John B. Brown, deceased	15,154.00	1,950.00	Do.
Mary Ann Jordan in her own right and as administratrix George Jordan, deceased	1,650.00	1,020.00	Do.
James A. Hill, administrator Peter J. Hill, deceased	18,481.50	7,950.00	Do.
Alice L. Mathews and Frank Mathews, executors Joseph L. Mathews, deceased, and Henry Taylor, surviving partner Mathews & Taylor	2,050.00	705.00	Do.
Refugia B. de Coy, administratrix Trinidad S. Coy, deceased	4,555.00	2,180.00	Do.
Total	74,032.50	29,645.00	

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 502.

PAPER RELATING TO CASE OF HITCHMAN COAL AND COKE COMPANY v. JOHN MITCHELL ET AL.

Mr. CULBERSON presented the following

PAPER RELATING TO THE CASE OF THE HITCHMAN COAL AND COKE COMPANY AGAINST JOHN MITCHELL ET AL.

MAY 21, 1908.—Ordered to be printed.

In the bill of complaint in this case an attempt is made to allege that the business of the complainant constitutes interstate commerce, presumably to bring the application for injunction within the rule in In re Debs (158 U. S., 571), but, as the matter of interstate commerce is nowhere mentioned in the restraining order issued, it may be assumed that the court ignored this allegation of the bill.

In the Debs case the following clause was contained in the order entered restraining the respondents, among other things—

> from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force or violence, any of the employees of any of said railroads to refuse or fail to perform any of their duties as employees of any of said railroads in connection with the interstate business or commerce of such railroads or the carriage of United States mails by such railroads or the transportation of passengers or property between or among the States.

The Debs case is cited as the controlling authority in every case examined where an injunction against labor unions has since been granted. As the order granted here contains a paragraph modeled exactly upon that quoted above from the order in the Debs case, it is evident that there has been an entire misconception of the use of the word "persuasion" in that order a single time, and an entire failure to distinguish the circumstances attendant upon such use there and those made the basis for its constant reiteration in the order under immediate consideration. No other portion of the order in the Debs case can be construed as restraining in the slightest degree the right of free speech among the several members of the labor unions there involved, and the use of the word in the clause quoted is expressly limited to matters involving the carriage of the United States mail or interstate commerce.

Mr. Justice Brewer, in his opinion in the Debs case (p. 598), says:

> It must be borne in mind that this bill was not simply to enjoin a mob and mob violence. It was not a bill to command a keeping of the peace; much less was its purport to restrain the defendants from abandoning whatever employment they were engaged in. The right of any laborer or any number of laborers to quit work

was not challenged. The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried. And the facts set forth at length are only those facts which tended to show that the defendants were engaged in such obstructions.

And further, in his conclusion, he finds:

That the complaint filed in this cause clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and the transportation of the mail—an obstruction not only temporarily existing, but threatening to continue.

Justice Brewer's views upon the propriety of granting restraining orders against the use of persuasion by members of labor organizations may be somewhat illuminated by the following excerpts from his opinion while a judge of the eighth circuit, in United States *v.* Kane et al. (23 Fed. Rep., 748):

In that case an injunction had been granted restraining the strikers from interfering with the property of the railroad company then in the hands of receivers appointed by the United States court. Kane and others were cited for contempt for disobedience of the order. Judge Brewer (p. 749) said:

Rules of right and wrong, obligations of employer and obligations of employee, do not change because the property is in the one instance a little bit of real estate and in the other a large railroad property; and if we apply these simple, commonplace rules of right and wrong we avoid oftentimes a great many troubles into which we come. Supposing Mr. Wheeler (a hypothetical owner of a small farm) had two men employed, and that he finds in the management of his little farm he is not making enough so that he can afford to employ two laborers, and he says to one of them, "I will have to get along without your services, and I will do with the services of the other," and the one leaves. That is all right. Supposing the one who leaves goes to the one who has not left and says to him, "Now, look here; leave with me," giving whatever reasons he sees fit, whatever reasons he can adduce, and the other says, "Well, I will leave," and he leaves because his colaborer has persuaded him to leave, has urged hin to leave; that is all right. Mr. Wheeler has nothing to say; he may think that the reasons that the one who is leaving has given to the one that he would like to have stay are frivolous, not such as ought to induce him to leave, but that is those gentlemen's business. If the one he would like to have stay is inclined to go because his friend has urged him, has persuaded him, has induced him to leave, Mr. Wheeler can not say anything. That is the right of both these men—the one to make suggestions, give reasons, and the other to listen to them and act upon them.

And again (p. 750):

The fact that half a dozen men went there and asked an engineer, or a brakeman, or a trainman to quit, that is all right, if it was simply a mere matter of request, a mere matter of giving views and reasons. That is a part of the common right of us all. We all can express our opinions. We can go to any friend and urge him to do this or to do that; that is a part of the common liberties of every man in this country; and the question is not whether these gentlemen went there in a pleasant way and stated reasons or urged their friends to quit work, but did they go with such an intended demonstration of power and in such an attitude that though, as they have stated here, they simply requested these engineers and employees to quit, they did it under circumstances that the engineers and the trainmen were intimidated and quit because they felt compelled to. I do not suppose that the court would be concluded by the mere statement of an engineer that he was afraid, because that might have been simply an excuse for his conduct, or it might have been because he was a timid man, and there was really no such demonstration that a sensible man, an ordinary man, a prudent and fair-minded man, had any reason to expect any further trouble.

So before the Government can properly ask the court to treat these defendants as in contempt it must satisfy the court that these requests were in fact something more than mere requests; that whatever language may have been used it was used under such circumstances and with such demonstrations that the employees, the engineers, and the trainmen felt that as prudent men they must leave; that because of due regard for their own safety and their own well-being they had to leave; and also that that demonstration was made, under the circumstances, with the intent to accomplish that result. * * *

It is not necessary that there should be actual violence. As my Brother Treat said in a similar case (in re Doolittle, ante, 544) that we had before us in St. Louis, a request under these circumstances is a threat. Every sensible man knows what it means, and courts are bound to look at things just as they are to pass on facts just as they are developed, to treat the conduct of men just as it is, and to impute to them that intention which their acts and their conduct disclose was their intention.

The evidence adduced on the hearing showed that there was a very large crowd gathered in the yards, intensely excited, surging backward and forward from engine to engine, and that the engineers were plainly overawed, and left their engines because of fear for their personal safety.

In Arthur *v.* Oakes Mr. Justice Harlan, sitting as circuit justice with Circuit Judge Woods and District Judge Bunn (63 Fed. Rep., 310), says upon motion to modify an injunction previously granted:

The fact that employees of railroads may quit under circumstances that would show bad faith on their part, or a reckless disregard of their contract, or of the convenience of both employer and the public does not justify a departure from the general rule that equity will not compel the actual personal performance of merely personal services, etc.

The result of these views is that the court below should have eliminated from the writ of injunction the words "and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad."

And again (p. 321):

These employees having taken service, first with the company and afterwards with the receivers, under a general contract of employment which did not limit the exercise of the right to quit the service, their peaceable cooperation as the result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal or criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the receivers and the public.

And (p. 325):

Those objects (the formation of labor unions), as defined by Congress, are most praiseworthy, and should be sustained by the courts whenever their power to that end is properly invoked. What we have said about illegal combinations has no reference to such associations, but only to combinations formed with the intent to employ force, intimidation, threats, or other wrongful methods whereby the public will be injured, or whereby will be impaired the absolute right of individuals, whether belonging to such combinations or not, to dispose of their labor or property upon such terms as to them seem best.

The judge of the eastern district of Wisconsin, granting the injunction, included in the order the following clause, prohibiting the respondents "from ordering, recommending, approving, or advising others to quit the service," etc. Upon motion made to him to strike out the clause quoted, he did so, making the following comment:

It is said, however, that the clause restrains an individual from friendly advice to the employees as a body, or individually, as to their or his best interests in respect of remaining in the service of the receivers. Read in the light of the petitions upon which the injunction was founded, I do not think that such construction can be indulged by any fair and impartial mind, etc.

In American Steel and Wire Company *v.* Wire Drawers' Union (90 Fed. Rep., 614) Judge Hammond, of the northern district of Ohio, granted a restraining order in the very language, mutatis mutandis, of the order in the Debs case, using, as there, the word "persuasion" but a single time. The ground upon which the order was granted, however, was because of the picketing of the streets and such a display of force as to intimidate would-be workers and prevent them

from going to complainant's plant. In the course of his opinion the judge says:

Nor is this freedom of access at all inconsistent with any right the strikers have to use the same streets and highways for the lawful conduct and maintenance of their strike by intercepting anyone going to work in their place for the purpose of peaceful entreaty or argument against supplanting them.

Clearly indicating that there was no intention to restrain free speech. In fact, upon direct inquiry by counsel for respondents whether the order restrained any man from talking to another man upon the street anywhere in a peaceable and quiet manner, the judge replied that it did not and that the Constitution protected him in that.

In United States *v.* Debs (64 Fed. Rep., 763) Judge Woods, circuit judge, says:

The right of men to strike peaceably, and the right to advise a peaceable strike, which the law does not presume to be impossible, is not questioned. But if men enter into a conspiracy to do an unlawful thing, and in order to accomplish their purpose advise workmen to go upon a strike, knowing that violence and wrong will be the probable outcome, neither in law nor in morals can they escape responsibility.

In his opinion in Vegelahn *v.* Gunter (Mass.) (44 N. E. Rep., 1081) Judge Holmes says:

So far I suppose we are agreed. But there is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any one of them might lawfully do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth might not be hidden in this proposition. But in the general way in which it has been presented and accepted by many courts I think it plainly untrue, both on authority and principle. * * *

But it is not necessary to cite cases. It is plain from the slightest consideration of practical affairs, or the most superficial of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental conditions of society and even the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that service between the effort of every man to get the most he can for his services, and that of society, disguised under the name of "capital," to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way. * * * If it be true that workingmen may combine with a view, among other things, of getting as much as they can for their labor, just as capital may combine with a view of getting the greatest possible return, it must be true that, when combined, they have the same liberty that combined capital has, to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control.

In view of the fact that the order in the Debs case was drawn presumably under the direct supervision of Mr. Olney, Attorney-General of the United States then, his suggestions as amicus curiæ, in the case of Platt *v.* Railroad Company (65 Fed. Rep., 660), are interesting here. He said:

Whatever else may remain for future determination, it must now be regarded as substantially settled that the mass of wage-earners can no longer be dealt with by capital as so many isolated units. The time is past when the individual workman is called upon to pit his single feeble strength against the might of organized capital.

And again:

They can not help knowing that organized capital is not so restricted (referring to the restrictions imposed upon labor unions by the courts), and when treatment so *apparently* unfair and discriminating is administered through the instrumentality of

a court, the resulting discontent and resentment of employees are inevitably intensified, because the law itself seems to have got wrong and in some unaccountable manner to have taken sides against them.

The Platt case was based upon an application by certain railroad employees for an order restraining the receivers of the railroad properties from discharging such employees because they were members of the Brotherhood of Railway Trainmen. The application was denied by Circuit Judge Dallas, of Pennsylvania, he holding that in the absence of legislation upon the subject the court was without authority to make such an order, and that it would be an interference with the personal right of the owners of the property or the receivers to employ or discharge whomsoever they chose.

In Coeur d'Alene Mining Company *v.* Miners' Union (51 Fed. Rep., 267), in which an injunction was granted, District Judge Beatty says:

When the attempted injury consists of acts or words which will operate to intimidate and prevent the customers of a party from dealing with or laborers from working for him, the courts have with nearly equal unanimity interposed by injunction. * * * What constitute such actionable threats or intimidations must be determined in each case from all the circumstances attending it. If the things done or the words spoken are such that they will excite fear or a reasonable apprehension of damages, and so influence those for whom designed as to prevent them from freely doing what they desire, and the law permits, they may be restrained.

In Toledo, etc. Rwy. Co. *v.* Pennsylvania Co. (54 Fed. Rep., 730), Circuit Judge Taft granted a temporary restraining order ex parte against P. M. Arthur, the chief executive of the Brotherhood of Locomotive Engineers, restraining him from issuing, promulgating or continuing in force any rule or order of said Brotherhood, forbidding the handling of traffic received from the complainant routed from one State to another, "and also from in any way directly or indirectly endeavoring to persuade any of the employees of the respondent railway companies" (p. 731) whose lines connected with the railroad company complaining, not to extend to said company the same facilities for interchange of interstate traffic as are extended by said companies to other railway companies. The restraining order and injunction were stated to have been granted under the express provisions of the interstate-commerce act, forbidding discriminations, etc., and making such acts punishable by fine.

In Hopkins *v.* Oxley Stave Company (83 Fed. Rep., 917), Judge Thayer, of the circuit court of appeals for the eighth circuit, speaking for a majority of the court in affirming the issuance of a temporary restraining order against labor unions, says:

While the courts have invariably upheld the rights of individuals to form labor organizations for the protection of the interests of the laboring classes, and have denied the power to enjoin the members of such associations from withdrawing peaceably from any service, either singly or in a body, even where such withdrawal involved a breach of contract, etc.

Recognizing at least the right to form labor organizations. The bill in the instant case, however, ingenuously states that the respondents, in endeavoring to unionize the complainant's mine, "are simply seeking power for the purpose of strengthening the union in future contests with employers of labor," which it is believed will certainly not be denied, and is a right conceded to workingmen by the Federal judges in all examined cases.

In the case just considered Judge Caldwell, dissenting, filed a lengthy opinion, entirely too long to be inserted here, reviewing his-

torically and otherwise the controversy between organized labor and organized capital.

In United States *v.* Workingmen's Council of New Orleans (54 Fed Rep., 994) District Judge Billings, of the eastern district of Louisiana, granting an injunction against labor organizations, says:

> It is conceded that the labor organizations were at the outset lawful. * * * It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country in which the court finds their error and their violation of the statutes.

The action of the court in granting the restraining order was affirmed by Judge McCormick, who declined, however, to give any expression of his own views, stating that these would be reserved should the matter come on for final determination before his court.

In United States *v.* Elliot (62 Fed. Rep., 801) Judge Thayer, district judge, granted an injunction against the respondents, restraining them from combining and conspiring to induce persons in the employ of said railroad companies to leave the service of their respective companies and to prevent them from securing other operatives, thus interfering with interstate commerce. (This is one of the Debs cases.)

In his opinion in the case of Knudsen *v.* Benn (123 Fed. Rep., 637) Judge Lochren, of the district of Minnesota, says:

> The right of laborers to consult together and form unions, if they please, for the purpose of their own advancement and for the obtaining of higher wages is conceded; and, I suppose, employers have the same right to form unions for the purpose of depressing wages, if they shall see fit to do so.
>
> Fellow-workmen may agree together to leave at once the service of their employer; but having done so, and being no longer interested in that matter, then, notwithstanding certain dicta in cases that have been read from, it does not seem clear to me that they are acting lawfully when they are persuading the servants of their former employer to break their contracts and leave the service. It is a matter that does not concern them any longer. It is a matter that is apparently injurious to their former employer. It seems to me that such an interference in a matter in which they have no rightful concern and which is injurious to another is not lawful.

And in the restraining order granted he prohibits the respondents from the use of "persuasion" to induce workmen to quit their employment, and also from establishing pickets "for the purpose of interviewing employees of complainants and inducing them not to remain in the complainants' employment."

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 503.

UNCLE SAM OIL COMPANY.

Mr. OWEN presented the following

MEMORIAL OF THE UNCLE SAM OIL COMPANY RELATING TO ITS BUSINESS TRANSACTIONS WITH THE STANDARD OIL COMPANY.

MAY 21, 1908.—Referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

WASHINGTON, D. C., *May 18, 1908.*

To the Senate of the United States:

The Uncle Sam Oil Company respectfully represents that about the year 1903 petroleum oil was discovered in the State of Kansas in paying quantities; that the Standard Oil Company established a refinery for refining said oil at the city of Neodesha, in the State of Kansas, and purchased all of the oil produced in the said field at a price averaging $1.40 per barrel; that said Standard Oil Company at that time by its every promise held out to the people that it would purchase all of the crude oil produced in said field at about the price of $1.40 per barrel, and that the people entered into the business of developing said field and developed the same from near Kansas City, Mo., extending southwest into Oklahoma, a distance of about 250 miles, and averaging in width about 25 miles; that many thousands of dollars were invested in the production of crude oil in this field during the years 1903 and 1904, and new pools of oil were constantly discovered in said field, and hundreds of corporations and business firms were formed and engaged in said business, and if said oil had been purchased by said Standard Oil Company at about $1.40 per barrel all of said corporations and business firms and individuals engaged in the production of said crude oil, as well as the owners of the land from which said oil was obtained, could have carried on a profitable business and received a reasonable return upon their investments.

That as soon as said oil field was ascertained by said development the Standard Oil Company commenced to decrease the price of crude oil, and as it was the only purchaser, the persons producing said crude oil were compelled to accept the price it named. That said Standard Oil Company claimed as a reason for the reduction in the price of crude oil that it was unable to ship said crude oil by railroad to its refinery at Whiting, Ind., and unable to refine all of the same at its refinery at Neodesha, Kans. That said company soon erected a large refinery on the Missouri River, near Kansas City, Mo., and connected

said refinery with said oil field by a pipe line. That said producers were led to believe that a higher price would be paid for said crude oil as soon as said pipe line was completed, but that instead of increasing the price of crude oil upon the completion of said pipe line the said Standard Oil Company continued to decrease the price, and the railroad companies, upon the completion of said pipe line, immediately raised the freight charge on crude oil from said field to Kansas City, Mo., to a point almost double the freight rate in force previous to the completion of said pipe line, making it impossible for the producers of said crude oil to ship the same to Kansas City or other market by rail. The said Standard Oil Company continued to reduce the price of said crude oil until in the early part of 1905 it had reduced the price to about 40 cents per barrel.

That early in 1905 the legislature of the State of Kansas was in session and it was proposed by said legislature to pass certain laws affecting the transportation of oil and the refining and selling of same. That one of said laws provided for the establishment of a State oil refinery. Another provided that all pipe lines transporting oil in the State should be considered common carriers and charges for transportation of oil should be supervised by the State. Another provided the maximum freight rate on all oil shipped by railroad in the State, and another provided that all persons selling oil in the State should sell the same in all portions of the State at a uniform price, freight rates considered. That when these laws were proposed to be passed by said legislature the said Standard Oil Company, in order to coerce said legislature and prevent it from passing any of said proposed laws, refused to purchase any of the crude oil produced in said Kansas oil field and disconnected its pipe lines with many of the oil-producing companies.

That the said refusal of the Standard Oil Company to purchase said crude oil brought ruin to the oil industry and to the owners of the land from which said oil was produced throughout said oil field, and hundreds of properties were abandoned and said business paralyzed. That among the producing companies thus staring ruin in the face was the Publishers' Oil and Gas Company, at Cherryvale, Kans. Said company had been organized early in 1903, for the purpose of producing and selling crude oil to the Standard Oil Company, under the assurance that said Standard Oil Company would pay it about $1.40 per barrel therefor. That it had paid $26,200 for oil leases near Cherryvale, Kans., on which it had drilled 49 oil wells, at a heavy expense, and had installed two expensive pumping plants to pump said oil wells and had connected the same with the pipe line of the Standard Oil Company in said field, preparatory to delivering its crude oil to the Standard Oil Company. That the leading men in the organization and promotion of said Publishers' Oil and Gas Company were H. H. Tucker, jr., and J. H. Ritchie. That the oil laws above referred to were passed by the Kansas legislature in February, 1905, and the said H. H. Tucker, jr., and J. H. Ritchie determined to organize a company and build refineries and pipe lines and distributing stations for the purpose of taking care of the crude oil of the Publishers' Oil and Gas Company and engaging generally in the production, refining, transportation, and marketing of oils, in competition with the Standard Oil Company. That said parties did not have the

capital necessary to acquire the necessary properties to successfully conduct said proposed business.

They organized a corporation under the name of the Uncle Sam Oil Company, under the laws of the Territory of Arizona, and fixed its capitalization at 75,000,000 shares, of the par value of $1 each; but before any of the capital stock was disposed of to the public they amended the charter so as to fix the capitalization at 10,000,000 shares, of the par value of $1 each. They realized the power and influence of the Standard Oil Company to crush and ruin any competitor in the oil business, and for the purpose of preventing the Standard Oil Company from purchasing enough of the stock of the Uncle Sam Oil Company to control it they provided in the charter that the shares should be divided into 1,000,000 shares, having 8 votes per share, and 9,000,000 shares having one-half of 1 vote per share, the 1,000,000 shares being denominated preferred stock, and the 9,000,000 shares treasury stock, but the preferred stock having no preference over the treasury stock except in the voting power of the stock. And the company, by its board of directors, sold all of the preferred stock to the said H. H. Tucker, jr., at 1 cent per share, with the agreement "that he shall not sell any of said shares for ten years from the date of said certificate, but shall hold the shares, and at all the stockholders' meetings shall vote the entire voting power of the shares in accordance with the wishes of the owners of a majority of the treasury stock, which shall be free from oil-trust influence and to keep the oil trust from securing control of the company during that time, and that prior to any sale of the shares he shall, at a regularly called stockholders' meeting, called for the purpose of amending the charter, vote all of the stock in favor of an amendment to the charter reducing the voting power of this stock to an equality of the treasury stock, so that each share of this stock will have the same voting power as each share of the treasury stock and no more."

That said Uncle Sam Oil Company was organized February 21, 1905, and at once published in many of the papers of the United States extensive statements of its plans and purposes, setting forth in substance that it was organized and proposed to sell its stock at a few cents per share, and with the means thus acquired it would build an oil refinery in the Kansas oil field at Cherryvale, Kans.; another in the Indian Territory oil field, on the Arkansas River; another on the Missouri River in Kansas, and connect these three refineries and two rivers with a pipe line extending through the oil fields of Oklahoma and Kansas to its refinery on the Missouri River, and that it would establish in the various trade centers accessible to its refineries distributing stations to enable it to successfully compete with the Standard Oil Company in the sale of its refined oils, and invited the public to subscribe to the capital stock of the company at 4 cents per share.

That the next month after said advertisements were first published the Standard Oil Company sent one P. C. Boyle, editor of the Oil City Derrick, of Oil City, Pa., to Kansas City, Mo., and through him paid to the Kansas City Star, a newspaper published at Kansas City, Mo., the sum of $2,471 for publishing reading matter in said paper favorable to the Standard Oil Company, and at the same time paid to the Kansas City Journal the sum of $3,340.50 for publishing in said Kansas City Journal the same reading matter, and the matter appear-

ing in said papers also appeared in many of the other important newspapers published or circulating in the territory covered by the advertisements of the Uncle Sam Oil Company, and during the existence of the Uncle Sam Oil Company, the Oil City Derrick and many other papers have constantly criticised, ridiculed, and attacked the Uncle Sam Oil Company, charging it to be a fraud; asserting that it would never build one refinery and that it was a mere stock-selling proposition to defraud the people. These attacks in the press made many persons hesitate and refuse to invest in the stock of the Uncle Sam Oil Company and made it very much harder for the company to secure the necessary funds to build its refineries, pipe lines, and distributing stations and acquire its oil properties, tank cars, and other equipment necessary to engage in the production, refining, and marketing of oil in competition with the Standard Oil Company. The public, however, placed confidence in the Uncle Sam Oil Company, notwithstanding the attacks of the newspapers referred to, and the company completed its first refinery at Cherryvale, Kans., on July 4, 1905, and the people of that vicinity celebrated the Fourth of July at the refinery, the oration being delivered by Hon. Patrick C. Coney, then department commander of the Grand Army of the Republic for the State of Kansas, in which oration he dedicated the properties of the Uncle Sam Oil Company to independence in the oil trade.

That soon after oil was put on the market from this first refinery, in competition with the Standard Oil Company, the said H. H. Tucker, jr., manager of the company, received a marked copy of the said Oil City Derrick, in which the statement was made that the Uncle Sam Oil Company would be barred from the mails as a fraud. Soon thereafter charges were filed in the Post-Office Department at Washington, and the company was notified thereof and required to show cause why a fraud order should not issue against the company. At this time the company had not acquired its tank cars and was conducting its oil business by shipment in barrels and receiving its orders for oil and remittances for oil by mail, and a fraud order preventing the company from using the mails would shut off all orders for oil and remittances for oil, as well as remittances for the sale of stock, through which the company expected to erect and acquire the other necessary properties for the proper conduct of its proposed business.

The said H. H. Tucker, jr., when said notice was received, had had no experience in the practice in the Post-Office Department, and while he knew that the charges of fraud were untrue, he did not know what steps to take to satisfy the Department of the good faith and honesty of the dealings of the company with the public. He accordingly called upon Congressman P. P. Campbell, at Pittsburg, Kans., who was the Representative in Congress from the Third Congressional district of Kansas, in which the first refinery was located, and asked Congressman Campbell for advice in the matter. Congressman Campbell advised him to employ Mr. D. W. Mulvane, of Topeka, Kans., the Republican national committeeman for Kansas, and wrote out a telegram to Mr. Mulvane asking him to meet the said H. H. Tucker, jr., the next day at Cherryvale, Kans., for consultation. This was on the 7th day of November, 1905.

After sending the telegram the said H. H. Tucker, jr., started to return to Cherryvale, but was overtaken at the depot by Congressman

Campbell, who informed him that he had just talked with Mr. Mulvane over the telephone, and that Mr. Mulvane was just starting for Washington on other matters and would meet him the next morning at the Southern Hotel, in St. Louis, Mo. Accordingly Mr. Tucker went to St. Louis and met Mr. Mulvane and explained to him the situation. Mr. Mulvane demanded the sum of $2,500 for representing the company before the Department. Mr. Tucker considered the amount exorbitant and unjust, and that if the Uncle Sam Oil Company was in fact a fraud which should be barred from the mails, the said D. W. Mulvane, national committeeman of the Republican party for the State of Kansas, ought not to appear before the Department to prevent the issuance of a fraud order, but that if the Uncle Sam Oil Company was in fact a legitimate business enterprise struggling to acquire a position whereby it could successfully produce, refine, and market oil in competition with the Standard Oil Company, that Mr. Mulvane, as national committeeman for Kansas, inasmuch as he was going to Washington on other business, ought not to burden the company by such a charge and could well afford to explain to the Department the good faith of the proposition free of any charge, to encourage the development of a legitimate enterprise seeking to do business in Kansas as a competitor of the Standard Oil Company.

Mr. Tucker realized, however, that but one of three refineries was completed, but a small part of the pipe line was purchased, and that the issuance of a fraud order would mean absolute ruin to the enterprise, and believing that the said D. W. Mulvane, on account of the prominent position he occupied, would be listened to by the Department and that he could satisfy the Department of the good faith and honesty of the company, consented to said charge of $2,500 and agreed to return to Cherryvale and to send to Mr. Mulvane a draft for $2,500 at Washington, D. C. He accordingly returned to Cherryvale and found that the funds of the company were low on account of the company having crowded the construction work of the properties as fast as possible, and he procured three drafts from the three banks at Cherryvale, Kans., one for $300, one for $500, and one for $1,700, aggregating $2,500, and indorsed them payable to D. W. Mulvane and sent them to him at Washington and never received any receipt for the same or any acknowledgment of the payment, but has procured the original drafts, bearing the indorsements of said D. W. Mulvane, showing that he received and cashed the same.

That soon thereafter said H. H. Tucker, jr., appeared in Washington, with the books of the company and the bank books and canceled bank checks, prepared to show that every dollar received upon stock subscriptions or in any other manner had been deposited in a bank on the date of reception, and that every dollar paid out for the company had been paid out on a bank check and expended in good faith in the interest of the company, and that there was no fraud in the transactions of the company. No fraud order was issued at that time. The company, however, was constantly attacked by the same newspapers above referred to and suffered great annoyance and great inconvenience through discrimination by the railroads in the shipments of its oil and the handling of its tank cars. The company, however, went on selling its stock to the public, and by September, 1906, it had completed its refinery at Atchison, Kans., on the Missouri River. That shortly

afterwards, when it placed oil on the market from the Atchison refinery in competition with the Standard Oil Company, there was a rumor current that the Post-Office Department was about to issue a fraud order against the company, but no fraud order was issued at that time.

The company went on selling its stock, and by the 1st of April, 1907, it had almost completed its refinery at Tulsa, on the Arkansas River. It had completed 141 miles of its proposed pipe line. It had 34 tank cars. It had almost completed 68 distributing stations, 35 of them completed and in operation, at which it was selling a good quality of refined oil in competition with the Standard Oil Company, and by such competition it had reduced the price of refined oil to the retail dealers in Kansas from 14 cents per gallon—the price theretofore maintained by the Standard Oil Company—to 7 cents per gallon, under the laws of Kansas requiring the oil to be sold at the same price in all parts of the State, freight rates considered, and had thus forced a loss to the Standard Oil Company and a saving to the people in the State of Kansas alone of about $2,000,000 per year on account of the reduction in price of refined oils in said State, and said Uncle Sam Oil Company was rapidly progressing and advertising its intention to make like reductions in the price of refined oil in the States of Nebraska, Iowa, Missouri, Arkansas, and the Territory of Oklahoma and Indian Territory, and in other States as fast as its means would permit. It was then advertising the fact that it would issue and sell $5,000,000 of its bonds, with which it would complete and enlarge its three refineries and pipe line and build its wax plant and lubricating works and increase its distributing stations and its oil wells and buy and store for treatment in said refineries at least $3,000,000 worth of crude oil, which the Standard Oil Company had forced down to 40 cents a barrel. Said crude oil, when treated in said refineries and wax plant and lubricating works, would be worth more than $4 per barrel, or more than ten times its original cost, and if the company could have carried out said proposition it could have made a net profit, after paying the bonds in full, of about $20,000,000, and had its properties completed, free of debt, and on a good dividend-paying basis.

In March, 1907, the said D. W. Mulvane visited Washington and had a conversation with some friend in the Post-Office Department in Washington. About the time of his visit to Washington certain attorneys at Topeka, Kans., commenced writing letters to stockholders of the company, stating that their names had been given them as dissatisfied stockholders, when in truth and in fact said stockholders were not dissatisfied; but said letters from said attorneys, after making to them the announcement that they were dissatisfied, proceeded to give such stockholders many false statements concerning the company and to try to induce said stockholders to commence some sort of an action against the company. About this same date the Financial World, published at New York City, announced editorially that the Uncle Sam Oil Company was a fraud and that the lid would blow off in a short time, and one of the Topeka attorneys wrote that there would be an explosion in about two weeks. About this time D. R. Hite was employed by the United States district attorney for Kansas, or appointed by the Attorney-General, to assist the district attorney in proceedings proposed against the said H. H. Tucker, jr. D. R. Hite offices with said D. W. Mulvane in Topeka, Kans., or in the

office adjoining Mr. Mulvane's office, with a door connecting the two offices. They use the same telephone and are considered by the people to be in the same office. Harry J. Bone, district attorney for Kansas, and C. E. Gault, the law partner of said D. W. Mulvane, are president and vice-president, respectively, of a business corporation in Topeka, Kans.

On the 5th day of April, 1907, the said D. W. Mulvane stated to the said H. H. Tucker, jr., that the district attorney was going to try to indict him by the grand jury which would meet on the 8th day of April, 1907, and suggested to the said H. H. Tucker, jr., that a friendly receiver should be appointed for the company, and that that would settle the matter, and suggested the selection of Samuel Fitzpatrick, a member of the Kansas senate, as such friendly receiver. Said Samuel Fitzpatrick was on that date an attorney for the Standard Oil Company, though that fact was not then known to the said H. H. Tucker, jr. The said H. H. Tucker, jr., declined said proffered friendly receiver, and on the 8th day of April, 1907, he was indicted in the United States district court for the district of Kansas, charged with having used the mails in aid of a scheme to defraud in the promotion of the Uncle Sam Oil Company and the conduct of its business. The Post-Office Department at once directed the withholding of the mail of the Uncle Sam Oil Company, but did not direct the withholding of the mail of the said H. H. Tucker, jr. The said Topeka lawyers who had been writing letters trying to induce some stockholder to commence action against the company within three days after the indictment of H. H. Tucker, jr., filed a bill in equity in the circuit court of the United States for the district of Kansas, wherein H. L. Tirrill, a citizen of the State of Illinois, was plaintiff, and the Uncle Sam Oil Company and its officers were respondents, in which bill said indictment was largely copied, and a receiver asked for to take possession of the property, books, and papers of the company.

While the said H. H. Tucker, jr., was still in the custody of the marshal on the warrant on said indictment the law firm of Karnes, New & Krauthoff, of Kansas City, Mo., who for about ten years had been and were collecting attorneys for the Standard Oil Company, and when said law firm did not represent a single stockholder or creditor of the Uncle Sam Oil Company, volunteered advice, stating that they were the representatives of a number of stockholders of the Uncle Sam Oil Company, and that in their opinion the arrest of the manager, the application for a receiver in the Tirrill suit, and the stoppage of the mails by the Post-Office Department would result in a demand of the stockholders for a reorganization of the company. Through conferences between the attorneys for the company at that time and said firm of Karnes, New & Krauthoff the officers of the Uncle Sam Oil Company were advised to make a pretended assignment of the property of the company to trustees for the benefit of the creditors and stockholders, not for the purpose of transferring any property to such trustees, but for the purpose of enabling said Karnes, New & Krauthoff to file a petition in bankruptcy, charging the making of said pretended assignment as an act of bankruptcy, so that a receiver in bankruptcy could be appointed to hold possession of the property while the stockholders were reorganizing. Said pretended assignment was made without any vote of the directors or stockholders, and without any purpose

or intent to transfer a single dollar's worth of property, and no property was delivered to said pretended trustees on said pretended assignment.

Immediately on the execution of said pretended assignment the said firm of Karnes, New & Krauthoff borrowed $2,500 of the bonds of the company belonging to said H. H. Tucker, jr., which bonds were payable to bearer, and then filed the petition in bankruptcy in behalf of three law clerks in their office, whom they alleged were the owners of said bonds and bona fide creditors of the company thereon, and also that the company was insolvent and that said pretended assignment was an act of bankruptcy and had said three law clerks verify said petition as true, and said petition was filed in the United States district court for the district of Kansas, at Fort Scott, Kans., on the 17th day of April, 1907. The said firm of Karnes, New & Krauthoff refiled said petition, with slight and immaterial changes, at Topeka, Kans., which petition was verified as true by W. S. McClintock, who also signed said petition as one of the attorneys for the petitioners. The said officers of the Uncle Sam Oil Company, when they listened to the advice of said Karnes, New & Krauthoff, did not know that they were then collecting attorneys for the Standard Oil Company, and upon discovering that said firm were attorneys for the Standard Oil Company they determined to have said bankruptcy proceedings dismissed and to contest all efforts made against the company, but that said firm of Karnes, New & Krauthoff refused to consent to a dismissal of said bankruptcy proceedings and stated that, while they would withdraw the proceedings so far as their law clerks were concerned, they would secure three other petitioners to intervene and carry on the litigation, even if they had to go out and buy claims against the company themselves. In this manner the officers of the Uncle Sam Oil Company were deceived and tricked into the bankruptcy proceedings, notwithstanding the company had property many times the value of the amount of its indebtedness and none of its debts were pressing for payment and notwithstanding its ability to pay all demands upon it in the usual course of business.

The officers of the company, upon discovering the manner in which they had been deceived into said bankruptcy proceedings, discharged their attorneys and employed other counsel and presented a motion to said bankruptcy court, asking that said bankruptcy proceedings be dismissed, for the reason that they were a sham and a fraud upon the jurisdiction of the court and because the company had not committed an act of bankruptcy. This motion was heard by Judge John C. Pollock, judge of said court, on May 10 and 11, 1907. The said judge rendered a written opinion denying said motion, which opinion clearly established the fact that said judge was prejudiced against the Uncle Sam Oil Company and its officers to that extent that the company could not secure a fair and impartial trial of said bankruptcy case with Judge John C. Pollock sitting as trial judge. Thereupon the company made an application for a change of trial judges and in said application set forth the manner in which it believed said judge had become prejudiced and the circumstances showing his prejudice. Said application was verified as true by the said H. H. Tucker, jr., as general manager of said company. Said application was heard before Justice William C. Hook, circuit justice for the district of Kansas,

June 5, 1907, and said Justice William C. Hook, without any complaint having been filed against said H. H. Tucker, jr., and without giving him any opportunity to know that he was being examined on a charge of contempt, forced him to be examined in his court as a witness against himself, and appointed Mr. N. H. Loomis, general attorney for the Union Pacific Railroad for Kansas, as a friend of the court, to conduct said examination, and on the completion of said examination said Justice William C. Hook without any complaint for contempt having been made or filed against said H. H. Tucker, jr., and without any evidence against him, and without any evidence contradicting the statements in said application for a change of trial judges, peremptorily sentenced said H. H. Tucker, jr., to confinement in the county jail of Leavenworth County, Kans., for a period of three months, commencing on said June 5, 1907.

A full report of said proceedings before said Justice William C. Hook was presented to the President of the United States, with an application for a pardon for said H. H. Tucker, jr., on June 11, 1907. Said application for pardon and the evidence submitted showed that said H. H. Tucker, jr., was guilty of no contempt of court and that he should be promptly pardoned by the President. The President, however, went upon his vacation, to be absent during the entire period of the sentence of H. H. Tucker, jr. Thousands of citizens petitioned the President to grant the pardon applied for. No action was taken by the President until counsel for the company insisted upon presenting the matter personally to the President, and then, upon July 27, 1907, the pardon was refused, on the ground that because the court was lenient to counsel for the company was no reason why said H. H. Tucker, jr., should escape. No one had contended for such proposition. The claim had been made that the record showed that Mr. Tucker was guilty of no offense and was unjustly imprisoned by an angry judge. Mr. Tucker was compelled to serve out the three months in said jail. His sentence, without complaint, trial, or hearing worthy of the name, is an outrage upon American civilization.

The bankruptcy case was tried before a jury, with Judge Charles F. Amidon, United States district judge for the district of North Dakota, as trial judge. After spending eight days in the introduction of testimony, and the exclusion of all testimony showing the conduct of the Standard Oil Company, and the railroads leading up to the arrest of Mr. Tucker, and the institution of the bankruptcy and other proceedings, Judge Amidon passed upon conflicting testimony as to the purpose and the manner in which said pretended assignment was made, and took the case from the jury and adjudged the company a bankrupt. Said adjudication was erroneous and could have been reversed upon writ of error, but a receiver had been appointed by Judge Pollock and was in possession of all of the property of the company, its books and papers, and was hostile to the interests of the company, was conducting its business so as to run it into debt, and was mismanaging its affairs so as to lose the trade and good will it had built up and established. The officers of the company therefore determined to advise the stockholders to contribute money enough to pay off the debts and expenses of the bankruptcy proceedings and take the company out of court rather than to appeal. The stockholders consisted of about 9,000 people, residing in almost every Congressional district in the United States.

As soon as these proceedings were commenced against the said H. H. Tucker, jr., and the company, these stockholders were flooded with letters from certain attorneys, which letters were filled with false statements, largely copied from said indictment, and advising the stockholders to employ them in order to save their investment in the company. Only about 350 out of the 9,000 listened to such false statements and advice, and about 100 of said 350 have recently withdrawn from said attorneys and taken their stand with the loyal stockholders. Said stockholders met in a stockholders' meeting duly called September 16, 1907. After a discussion of the affairs of the company they ratified all the acts of the officers of the company from its organization down to that date and enlarged the board of directors from 3 to 21 members, elected 21 competent men, residing in the various States, as directors, 19 of whom have qualified by taking the oath to faithfully discharge the duties of directors and are managing the affairs of the company, except those touching the property of the company in the hands of the bankruptcy court. Said stockholders also passed a resolution levying an assessment of 4 cents per share on each share of the capital stock of the company outstanding for the purpose of paying the debts of the company, the costs of the bankruptcy proceeding, and completing the unfinished properties of the company and putting them on a good dividend-paying basis. The stockholders have paid into the treasury of the company since the bankruptcy proceedings commenced money enough to pay the debts of the company, the expenses of the bankruptcy proceeding, and are paying in the balance of said assessment to complete the properties. Said company will be taken out of the bankruptcy court as soon as a decision can be made on some unimportant matters appealed from the referee to the court, which will probably be done within the coming month.

All of the attorneys interested in bringing the bankruptcy proceedings joined the receiver appointed by Judge Pollock in an effort to secure the election of said receiver as trustee in bankruptcy, but at the suggestion of said H. H. Tucker, jr., the creditors elected as such trustee Hon. Peter W. Goebel, president of the Commercial National Bank of Kansas City, Kans., and he has been in charge of the properties since November 8, 1907, and although without the necessary means to conduct the business he has operated the Cherryvale refinery at one-quarter of its capacity from December, 1907, to April 1, 1908, at a profit of over $20,000. His superintendent and general manager, Mr. James A. Fleming, an oil man of forty years' experience, states that the refineries of the company, operated to their full capacity of 1,500 barrels per day, will earn a profit of practically $250,000 per year without the wax plant and with the pipe line uncompleted, and that with the wax plant and pipe line completed the properties of the company will earn a profit of substantially $1,000,000 per year. The appraisers appointed by the referee in bankruptcy appraised the property of the company, after it had been in the hands of the receiver for a period of seven months, at $625,018.50, and one of the appraisers, Mr. James A. Fleming, above referred to, has stated under oath that the properties are worth to the company at least $200,000 more than the amount of the appraisement. In the bankruptcy proceedings the said attorneys, receiver, and referee filed claims for over $35,000 for their services for

the company during a period of about seven months. These claims were reduced by Judge Amidon, sitting as judge of said court, but the amount finally allowed was a wholly unnecessary expense to said company, and the payment thereof out of the property of the company was a violation of the property rights of said company.

The indictment secured against said H. H. Tucker, jr., on the 8th day of April, 1907, was heard December 6, 1907, upon demurrer, and Judge David P. Dyer, of the eastern district of Missouri, sitting as the trial judge, sustained the demurrer to said indictment. Said Judge Dyer at the same time, sitting as judge of the United States circuit court for the district of Kansas, sustained a demurrer to the bill in equity in the case of Tirrill against the company. Thereupon the district attorney for Kansas secured the reindictment of the said H. H. Tucker, jr., and said second indictment was heard upon demurrer before Judge Amidon on the 20th day of April, 1908, and said demurrer sustained. Thereupon the said district attorney procured a third indictment against said H. H. Tucker, jr., on April 23, 1908, charging substantially the same offenses attempted to be charged in the first and second indictments. This indictment was tried before Judge Amidon by a jury at Topeka. The trial commenced on the 24th day of April and ended on the 6th day of May, during which every feature of the organization, promotion, and conduct of the business of the Uncle Sam Oil Company by said H. H. Tucker, jr., was thoroughly investigated, and the honesty and innocence of said H. H. Tucker, jr., of any fraud was thoroughly established, and the jury promptly returned a verdict of not guilty.

March 26, 1908, when the Post-Office Department at Washington learned that the stockholders of the company had paid in to H. H. Tucker, jr., as treasurer, enough money to pay off the debts of the company and the expenses of the bankruptcy suit and take the company out of bankruptcy, and that they were continuing to make said payments for the purpose of completing the properties and placing them on a good dividend-paying basis, the said Post-Office Department issued a fraud order against said H. H. Tucker, jr., of Kansas City, Kans., preventing him from receiving any mail at said office and preventing all of said stockholders from communicating in any manner by mail with said officer and company; that said fraud order was issued, based upon a report made to the Postmaster-General by R. P. Goodwin, Assistant Attorney-General for the Post-Office Department; that said report was untrue and incorrect and wholly unsupported by the testimony offered before said R. P. Goodwin, and clearly discloses a desire upon the part of said R. P. Goodwin to mislead and deceive the Postmaster-General into the issuance of said fraud order in violation of the rights of said H. H. Tucker, jr., and said Uncle Sam Oil Company; and said Post-Office Department has printed said report and is mailing the same to the stockholders of said company in an apparent effort to induce them to refuse to contribute the necessary means to complete the properties of the company and place them on a good dividend-paying basis. And notwithstanding the fact that the jury trial in the Federal court established the honesty and innocence of said H. H. Tucker, jr., said Post-Office Department is neglecting to rescind or revoke said fraud order, to the great injury of said company.

The said Uncle Sam Oil Company most humbly prays that the conduct of the Post-Office Department and of other Federal officers touching the litigation and affairs of the company be investigated in such manner as your honorable body may determine, to the end that such outrages and injustices as have been perpetrated upon this company may be fully disclosed and the persons responsible therefor removed from office or properly punished for their misconduct in office, and the laws so amended as to prevent such injustices in the future.

THE UNCLE SAM OIL COMPANY,
By JAMES M. INGERSOLL, *President.*
ALBERT L. WILSON,
Counsel for Uncle Sam Oil Company.

O

60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 505.

PAPERS RELATING TO ENROLLMENT OF CITIZENS OF CHOCTAW AND CHICKASAW NATIONS.

Mr. CLAPP presented the following

PAPERS RELATING TO THE ENROLLMENT OF CITIZENS OF THE CHOCTAW AND CHICKASAW NATIONS.

MAY 21, 1908.—Ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 21, 1908.

SIR: The Department has had under consideration Senate resolution No. 69, submitted by you on January 24, 1908. You ask for report thereon, including any explanatory matters that may be deemed advisable.

A copy of the resolution has been forwarded to the Commissioner to the Five Civilized Tribes at Muskogee, Okla., with instructions to report on such of the paragraphs thereof as more particularly relate to the work of the Commissioner, and when response is received from him full report will be made by the Department covering the information furnished by him and that which is requested from the records of the Department. However, I take this opportunity of reporting in advance regarding Paragraphs I, IV, VI, and VIII of the resolution.

The rolls of Choctaw Indians, or schedules of such Indians, in effect and having the force of rolls that are in the possession of the Department are as follows:

(1) Register of Choctaw Indians claiming lands under the various provisions of the Choctaw treaty of 1830 and the supplement thereto, prepared by F. W. Armstrong in 1831. This register has been printed and is generally known as Armstrong's Register. It appears in Volume VII (public lands) American State Papers, pages 38 to 122, inclusive, making an aggregate of 85 pages. If printed in brevier type on pages of the size of ordinary Government reports of the present day, it would make the same number of pages.

(2) In 1831, after the Choctaw lands had been surveyed, George W. Martin was sent to the ceded Choctaw country in Mississippi to make a record of those Choctaw who claimed land under the treaty and supplement, and of the description by Government survey of the lands claimed. He was engaged in this business until the year 1836, and his report is generally known as Martin's Register. It also has been printed by the Government and consists of 43 pages of the usual size of Government reports, printed in brevier type.

(3) Immediately after the ratification of the treaty of 1830 the Choctaw Indians began to complain that the agent had refused to make record of the desire of many of their number to remain east of the Mississippi and reap the benefits of the fourteenth article of that treaty. The proofs submitted to the War Department regarding the allegations of misconduct on the part of the agent were so convincing that Congress passed an act, approved March 3, 1837 (5 Stat. L., 180), providing for the appointment of commissioners to adjust the claims to land under the fourteenth article of the treaty. The time for which these commissioners were appointed having expired before the work was completed, Congress passed a further act, approved August 23, 1842 (5 Stat. L., 513), providing for the satisfaction of the claims arising under the fourteenth and nineteenth articles of the Choctaw treaty. Both of these acts provided for the issuance of scrip in lieu of the land which the Indians had lost in consequence of the misconduct of the agent or through other causes over which they had no control. Reports of these commissions were forwarded at different times and acted on by the Department, on the basis of which action scrip was issued. The records concerning the cases tried by the commissions have been printed and comprise 248 pages of Government report size, printed in brevier type.

(4) The general emigration of the Choctaws under the treaty was begun in 1831 and ended early in 1833. However, as years went on, Congress appropriated funds for the removal of those remaining East, and the emigration of the Indians was almost constantly in process until January, 1855, when it was discontinued. The records of the Indians transported West by the Government during all these years are in the Indian Office and consist of 161 written pages, which it is estimated would make 53 printed pages of the size above mentioned.

(5) Only half the scrip to which the Indians were entitled was delivered to them. Some of it was delivered west of the Mississippi and some east. The schedules showing these deliveries contain important genealogical information and for that reason their printing would be desirable in connection with the other schedules. However, very little credit can be given to the schedule compiled by J. H. Bowman, who delivered the scrip east of the Mississippi River, because he was charged with various frauds in its delivery, and the information contained in the departmental records is of such a character as to justify the strong suspicion that he allowed white men who desired to secure the scrip to bring before him Indians who impersonated the real owners and secured the certificates. These schedules consist of 135 pages, which, if printed in brevier, would probably make 45 pages.

(6) In 1855, Douglas H. Cooper, the agent of the Choctaws West, was directed to go to the Choctaw country in Mississippi, Louisiana, and Alabama and make a census of those members of the tribe still remaining in those States. Mr. Cooper visited the Choctaw country and made a roll, but from what the Indian Office has learned since concerning these Indians, it is evident that his roll was very incomplete. However, it is good for what it contains. If printed it would make not to exceed 3 pages.

(7) In 1856 the tribal authorities of the Choctaw Nation presented schedules of claims made by individual citizens of the nation for the expense of self-emigration and for losses of property incident to the

removal. These schedules consist of 113 pages, and if printed in brevier would probably make 37 pages.

The rolls of Chickasaws are as follows:

(1) The emigration muster rolls, compiled in 1837 by A. M. M. Upshaw, consisting of 35 pages, which if printed would make probably 12 pages.

(2) The census made in 1839 by A. M. M. Upshaw, consisting of 45 pages, which if printed in brevier would make probably 15 pages.

(3) Book No. 13, covering reservation claims of the heads of Chickasaw families, consisting of 147 pages, which if printed in brevier would make probably 49 pages.

Copies of the papers covered by paragraphs IV, VI, and VIII are inclosed.

Respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

Hon. MOSES E. CLAPP,
Chairman Committee on Indian Affairs,
United States Senate.

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1908.

SIR: On January 28, 1908, the Department forwarded to the Commissioner to the Five Civilized Tribes copy of Senate Resolution No. 69, calling for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations.

The Department has received report, of the 10th instant, from J. G. Wright, Commissioner to the Five Civilized Tribes, covering all paragraphs of the resolution except Nos. 1, 4, 6, and 8, which have been covered by separate report from the Department.

On pages 3, 4, and 5 of Commissioner Wright's report information is given relating to various rolls and schedules of Choctaw citizens and freedmen, and the names of counties to which each roll or schedule refers are given; but nowhere in the report is there furnished a complete list of the tribal counties of the Choctaw Nation.

The Department believes that the following list covers all the tribal counties: Atoka, Blue, Boktuklo, Cedar, Eagle, Gaines, Jacks Fork, Jackson, Kiamitia, Nashoba, Red River, Sans Bois, Skullyville, Sugar Loaf, Tobucksy, Towson, and Wade.

By comparison of the information concerning the 1885 roll it will be seen that it does not contain the names of citizens located in Jackson County. The 1893 roll covers all the counties. The memorandum rolls of citizens by blood used in the compilation of the census roll of 1896 do not contain the names of the Indians in Gaines, Nashoba, Sans Bois, Tobucksy, or Wade counties. The memorandum rolls of intermarried whites do not contain the names of the intermarried citizens in Cedar, Gaines, or Sans Bois counties. The memorandum rolls of freedmen fail to contain the names of those located in Atoka, Blue, Cedar, Gaines, Jacks Fork, Nashoba, Sans Bois, Sugar Loaf, or Tobucksy counties.

Commissioner Wright's report was made with reference to the period *from 1880 to 1900*, although the call of the Senate covers the

period from 1830 to 1890, but he did give information concerning the Chickasaw roll of 1878. However, it is the information of the Department that aside from the Chickasaw roll of 1878 the Commission, and its successor, the Commissioner, had no rolls antedating the year 1880.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

Hon. MOSES E. CLAPP,
Chairman of Committee on Indian Affairs,
United States Senate.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., February 10, 1908.

SIR: Receipt is hereby acknowledged of Indian Office letter of January 28, 1908, inclosing a copy of Senate resolution No. 69 (60th Cong., 1st sess.), calling on the Secretary of the Interior for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations. The call is divided under sixteen heads, and the most of these items relate to records in the possession of this office and business transacted by the Commission to the Five Civilized Tribes, and it is stated that it will therefore be necessary that this office respond to all parts of the call except paragraphs Nos. 1, 4, 6, and 8.

In giving the list of the rolls that are in the possession of this office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations, it is desired that there be given a complete description of each roll, including the size of the page, the number of names or lines on each page, and the number of pages, together with an estimate of the number of pages it would make if printed in brevier.

Inasmuch as it is necessary that this information be furnished at as early a date as possible, this office is requested to make it special.

In compliance with the above instructions, I have the honor to submit the following report with reference to the several items embodied in Senate resolution No. 69, to which this office is directed to respond:

II. A list of the rolls of Choctaw and Chickasaw Indians prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1880 to 1900, inclusive, and now in the custody and possession of the Department or any bureau, division, or commission thereof or thereunder; the designation of each roll and by whom and in what year or years each of said rolls was prepared, and the purpose for which each of said rolls was prepared.

There are now in the custody and the possession of the Commissioner to the Five Civilized Tribes the following rolls and memoranda of rolls which appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1880 to 1900, inclusive:

CHOCTAW NATION.

The 1885 census rolls for the counties of Wade, Towson, Sugar Loaf, Eagle, Tobucksy, Blue, Sans Bois, Boktuklo, Jacks Fork, Cedar, Skullyville, Gaines, Nashoba, Red River, Kiamitia, and Atoka. The

pages of these rolls are 8 by 14 inches in size, 30 lines to a page, and the rolls contain in all a total of 572 pages, upon which are listed the names of Indians, whites, and freedmen. The purpose for which they were prepared is not known by this office.

The 1893 census rolls for the counties of Jackson, Eagle, Tobucksy, Sugar Loaf, Towson, Wade, Cedar, Skullyville, Jacks Fork, Boktuklo, Sans Bois, Kiamitia, Blue, Atoka, Red River, Nashoba, and Gaines, and also a list of those Choctaws residing in the Chickasaw district. The pages of these rolls are 8 by 14 inches in size, 15 lines to a page, and the rolls contain in all a total of 1,627 pages, upon which are listed the names of Indians. These rolls were prepared for the purpose of making the leased district payment.

The 1896 census roll (No. 1) for all the tribal counties of the Choctaw Nation, arranged alphabetically. This roll contains 480 pages, 14 by 20 inches in size, 50 lines to a page, and there are listed in this roll the names of 18,953 Indians, whites, and freedmen. This roll was prepared for the purpose of complying with the act of Congress approved June 10, 1896 (29 Stats., 321).

The 1896 census roll (No. 2). This roll is practically a duplicate of the above roll, and was not furnished this office as an official roll.

Memorandum rolls, from which the 1896 census rolls were prepared, as follows: List of the Indians for the following counties: Skullyville, Atoka, Jacks Fork, Red River, Kiamitia, Towson, Sugar Loaf, Cedar, Jackson, Eagle, Boktuklo, Blue, and those Chickasaws residing in the Choctaw Nation. List of whites for the following counties: Jackson, Kiamitia, Tobucksy, Jacks Fork, Skullyville, Blue, Wade, Boktuklo, Sugar Loaf, Eagle, Nashoba, Atoka, Red River, Towson, and those Chickasaws residing in the Choctaw Nation. List of freedmen for the following counties: Eagle, Skullyville, Kiamitia, Red River, Boktuklo, Wade, Jackson, and Towson.

The pages of these memorandum rolls are 7 by 12 inches in size and contain 1,021 pages, upon which are listed the names of 12,489 Indians, whites, and freedmen.

CHICKASAW NATION.

The 1893 Chickasaw pay roll (No. 1), in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 37 lines to a page, and the names of Indians and whites appear upon 141 pages of this roll. This roll was prepared for the purpose of making the leased district payment.

The 1893 Chickasaw pay roll (No. 2), in which the names are not listed by counties, the pages of which are 8 by 14 inches in size, 40 lines to a page, and the names of Indians and whites appear upon 228 pages of this roll. This roll was prepared for the purpose of making the leased district payment.

The 1893 Chickasaw Maytubby roll (No. 1), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 26 lines to a page, and the names of Indians and whites appear upon 416 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased district payment to the Chickasaws.

The 1893 Chickasaw Maytubby roll (No. 2), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12, 22 lines to the page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased district payment to the Chickasaws.

The 1896 Ieshatubby roll, which is a manuscript roll in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 22 lines to the page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased district payment to Chickasaws.

The 1896 census roll for the counties of Panola, Pickens, Tishomingo, and Pontotoc, and of those Chickasaws residing in the first, second, and third districts of the Choctaw Nation. The pages of this roll are 8 by 12 inches in size and contain, in all, 97 pages, upon which are listed the names of 5,820 Indians and whites. This roll was made for the purpose of complying with the act of Congress approved June 10, 1896 (29 Stats., 321).

Memorandum roll for the counties of Panola, Pontotoc, Tishomingo, and Pickens, and of those Chickasaws residing in the first and second districts of the Choctaw Nation. The pages of this roll are 14 by 17 inches in size, 40 lines to a page, and the names of Indians and whites are listed upon 123 pages of this roll. This memorandum roll was used by the officials or representatives of the Chickasaw Nation in preparing the 1896 census roll.

FREEDMEN.

In addition to the above rolls of the Choctaw and Chickasaw nations there has been furnished this office a freedmen roll of three volumes (one volume each for the first, second, and third districts of the Choctaw Nation) of those freedmen who, in the year 1885, elected to receive the $100 payment and remove from the Choctaw Nation. The pages of each volume are 8 by 14 inches in size, and the three volumes contain, in all, 105 names.

One volume for the first, second, and third districts of the Choctaw Nation, entitled "Freedmen Registration, Admitted," the pages of which are 8 by 14 inches in size, 34 lines to a page, and contain, in all, a total of 251 pages, upon which are listed the names of freedmen. None of these three lists is certified to, nor is there any date showing when said lists were complied, but it is believed that they were prepared in the year 1885, the date when the lists of freedmen who elected to receive the $100 payment and remove from the Choctaw Nation were prepared.

In addition to the rolls enumerated above there have been furnished this office, at various times, a number of miscellaneous rolls, lists, and papers upon which appear names of Indians, whites, and freedmen; but it is not shown that they were prepared between the years 1880 and 1900, inclusive.

The matter of furnishing an estimate of the number of pages, *printed* in brevier and of the same size as the page of a Government *report*, required to make a printed copy of all rolls and memoranda

of rolls, and the cost thereof, will be discussed at the conclusion of this report.

III. Which of said rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by said Commission in the preparation of the "final citizenship rolls" of the Choctaw and Chickasaw nations?

The following rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by this office in the preparation of the final rolls of the Choctaw and Chickasaw nations, being the only rolls that were considered as official:

Choctaw Nation.—1885 census roll; 1893 leased district payment roll; 1896 census roll.

Chickasaw Nation.—1878 annuity roll; 1893 leased district payment roll (Nos. 1 and 2); Maytubby roll (Nos. 1 and 2); Ieshatubby roll of Chickasaws residing in the Choctaw Nation who drew the leased district money as Chickasaws; 1896 census roll.

No rolls of Chickasaw freedmen have ever been furnished the Commission or the Commissioner to the Five Civilized Tribes, and this office has always been advised that no rolls of the Chickasaw freedmen have ever been made under the direction of the Chickasaw tribal authorities.

The 1896 census roll of Choctaw freedmen was used in connection with the enrollment of Choctaw freedmen, but all freedmen who established that they were, at any time, slaves of a Choctaw or Chickasaw Indian or descendants of such slaves were enrolled without reference to the question of whether or not their names appeared on any rolls.

V. A copy of the report of the Commission to the Five Civilized Tribes, under date of January 24, 1903, in the case of Bettie Lewis, respecting the authenticity and the reliability of the rolls therein referred to, and which report is particularly referred to in the decision of the Assistant Attorney-General in the case of Mary Elizabeth Martin, rendered March 24, 1905.

The following is a copy, in full, of the above report:

MUSKOGEE, IND. T., *January 24, 1903.*

The honorable the SECRETARY OF THE INTERIOR.

SIR: Receipt is hereby acknowledged of departmental communication of December 27, 1902 (I. T. D. 4703-1902 and 6496-1902), requesting attention to departmental letter of October 23, 1902 relative to the application of Bettie Lewis for enrollment as a citizen of the Choctaw Nation.

The matter was first brought to the attention of the Department in the decision of the Commission, under date of July 23, 1902, refusing the application made by Bettie Lewis for enrollment as a citizen by blood of the Choctaw Nation. In her testimony before the Commission at Atoka, Ind. T., June 7, 1900, Bettie Lewis stated that her father, Butler McGee, who had then been dead about fifteen years, was, during his lifetime, a recognized citizen by blood of the Choctaw Nation and a resident of Jacks Fork County.

On August 12, 1902, the Department, upon the recommendation of the Acting Commissioner of Indian Affairs of August 2, 1902, requested the Commission to report whether the name of Butler McGee, the alleged father of Bettie Lewis, is found on any of the tribal rolls of the Choctaw Nation.

In reply thereto the Commission, on August 28, 1902, advised the Department "that the enrollment of the citizens of the Choctaw and Chickasaw nations, as now being made by this Commission, is upon the identification of the applicants from the 1893 leased district payment roll of the Choctaw and Cihckasaw nations and the 1896 census roll of citizens of these two tribes," and further, "no authenticated rolls of the citizens of the Choctaw and Chickasaw tribes have ever been furnished the Commission as a basis of enrollment, nor have any roll or rolls of the citizens of these two tribes ever been adopted or confirmed by the national council of the Choctaw Nation or the legislature of the Chickasaw Nation as authenticated rolls of citizenship," and further,

"the Commission has not in its possession, nor has it any knowledge of any rolls of the citizens of the Choctaw and Chickasaw nations made during or prior to the year 1885," and further, "the request has heretofore on several occasions been made to the tribal authorities of the Choctaw and Chickasaw nations to furnish the Commission with any and all rolls and records of citizenship in the possession of the two tribes, but we have never been furnished with any roll or rolls of the citizens made prior to the leased district payment roll of 1893."

In reporting on the communication of the Commission of August 28, 1902, the Acting Commissioner of Indian Affairs, under date of October 21, 1902 (Land 51962-1902), after referring to acts of the national council of the Choctaw Nation and of the Chickasaw legislature, authorizing the preparation of rolls of citizenship, expresses the opinion that such tribal legislation clearly shows that "there were censuses prepared and regular rolls of citizenship kept, and that the enrollment of citizens was one of the important functions of government in the Choctaw and Chickasaw nations for many years; that this being true, there must be numerous rolls of the citizens of the two tribes antedating the 1893 leased district payment roll of these two tribes."

The Acting Commissioner of Indian Affairs further expresses the opinion that the Commission should be instructed to again call upon the executives of the Choctaw and Chickasaw nations for such rolls made prior to 1893, and in case of failure upon their part, to appeal to the United States court, in accordance with the provision of the act of Congress of June 28, 1898.

In concluding the Acting Commissioner of Indian Affairs states as follows:

"This Office has examined and reported on a large number of cases of applicants for enrollment as citizens by blood of the Choctaw and Chickasaw nations and recommended that the applicants be rejected for enrollment on the presumption that statements by the Commission in those cases, of the general character of the statements in the two cases referred to herein, involved an exhaustive examination of the rolls of those two nations and is now surprised and disappointed to learn that it was misled into believing that the examination had been thorough and complete. In other words, these recommendations and the action of the Department thereon were based on false premises, and many of the conclusions reached may have been consequently erroneous.

"This Office, in the light of the circumstances presented, recommends that the Bettie Lewis case, and all other rejected applications for citizenship in the Choctaw and Chickasaw nations be held for further consideration until the Commission is in a position to make a more thorough examination with reference to what the Choctaw and Chickasaw rolls actually do show."

This report of the Acting Commissioner of Indian Affairs was transmitted by the Department for consideration, report, and recommendation on October 23, 1902 (I. T. D. 6496-1902).

The Commission has to report that from the inception of the work of the enrollment of the citizens of the Choctaw and Chickasaw nations, every possible effort has been made to obtain from the tribal authorities of these two nations any rolls of citizenship that they might have in their possession. The first step taken in this direction was after the approval of the Act of Congress on June 10, 1896, when request was made of the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation to furnish the Commission the last authenticated roll of citizens of these two tribes made prior to June 10, 1896, and all other rolls made subsequent thereto, with such copies of the acts of legislature and the national council of the two nations, the judgments of citizenship courts or commission as may have been rendered since the date of the last authenticated rolls, admitting persons to citizenship in the Choctaw and Chickasaw nations, and such other records and documents as might be in any manner helpful to the Commission in making rolls of the citizens of the two nations in accordance with the acts of Congress of June 10, 1896, and June 7, 1897.

This request was made of the chief executives of the two tribes in communications under date of June 28, 1897. In reply thereto the principal chief of the Choctaw Nation, under date of July 10, 1897, advised the Commission:

"It is absolutely impracticable for me to furnish a complete roll of the Choctaws, together with all persons admitted after June 10, 1896. I think, however, that I can furnish your Commission names of some parties that were fraudulently admitted, provided that you will extend my time for this work, say, about twenty days from the 2d of August."

The principal chief of the Choctaw Nation, on July 17, 1897, in reference to the rolls, advised this Commission as follows:

"It will be impossible for me to furnish your Commission with the last authenticated *roll made* prior to June 10, 1896, as the time to prepare the roll is too brief. But the *last revised* roll, made in accordance with an act of council (October, 1896), contains all

the citizens of the Choctaws by blood, intermarriage, and adoption, and is about complete after about four months of labor, and will be furnished you at the time requested. I will add, however, that the law authorizing this last roll, provided that the principal chief shall approve of and sign the roll before it becomes the recognized rolls of the citizens of the Choctaw. But I am satisfied that there are some names on the roll that have been registered through fraud or misrepresentation. I shall not approve of it until these cases are investigated. At the proper time I will furnish you a list of these names and of the witnesses."

On July 30, 1897, the principal chief advised the Commission of the forwarding by express of the revised roll of the Choctaw Nation, containing the names of the citizens by blood, marriage, or adoption, and in this connection states as follows:

"The law requiring the taking of the roll required it to be approved by the principal chief, but as there are names on the roll that I am satisfied ought not to be there, I will not approve of the rolls until these cases are investigated. I will furnish you in a few days all the evidence I can bring on these cases."

Under date of August 13, 1897, the Commission addressed a communication to the principal chief of the Choctaw Nation, requesting that he "inform us the date of your last authenticated roll, approved by your national council, prior to June 10, 1896, which includes the names of intermarried citizens as well as citizens by blood. It will be necessary for us to have that roll, and every other roll made since that time, to enable us to comply with the law under which we are to make rolls."

In reply to this communication, on August 17, 1897, the principal chief of the Choctaw Nation advised the Commission as follows:

"I wish to inform you that there was no roll of intermarried citizens made prior to June, 1896.

"The revised rolls which I recently furnished your commission is the only roll made by this nation that contains the names of intermarried citizens."

The governor of the Chickasaw Nation, on July 22, 1897, in reply to our request of June 28, 1897, advised the Commission as follows:

"We have only one authenticated roll of citizens, and that is the one approved by the legislature in 1896;" and on December 27, 1897, the governor of the Chickasaw Nation advised the Commission that he had that day forwarded a "true copy of the roll of our people; the best we can do under present circumstances. Any information you may wish in regard to same will be gladly given, if within my power to do so."

The correspondence had with the chief executives of the two tribes above referred to shows clearly that there had never, prior to the approval of the act of Congress of June 10, 1896, been any rolls of the citizens of the Choctaw and Chickasaw nations which had been ratified and confirmed by the legislative bodies of these two nations or had received the approval of the chief executives. It is a matter of general information in said nations that the rolls made prior to that time were merely census rolls, made up separately according to counties and districts by individual census takers in such counties and districts, and which were never brought together or consolidated so as to form a complete roll of tribal members.

The rolls made under the provisions of the act of Congress of June 10, 1896, by the tribal authorities, have never received the confirmation of the legislative bodies of the two nations, nor the approval of the chief executives; so that at the inception of the work of the enrollment of the citizens of these two nations the Commission was only furnished with the two rolls above referred to and made under the provisions of the act of Congress of June 10, 1896, and which, the Commission was informed, contained inaccuracies. In 1898, after the approval of the act of Congress of June 28, 1898, authorizing the Commission to make correct rolls of the citizens of these two tribes, an earnest effort was made to secure from the tribal authorities of these two nations all rolls of citizenship and other papers, documents, and acts of admission of any description that might in any manner assist the Commission in the preparation of correct rolls of the citizens of the two tribes, and to determine whether any such rolls, documents, or acts were in existence, and if so, where located.

In the fall of 1898, when the Commission began the work of enrollment in the Choctaw and Chickasaw nations, Commissioners Bixby and McKennon, who were both in the field, conducted an investigation looking to the location and acquirement of tribal rolls and records. As a result of their personal efforts the Commission secured the Choctaw leased district payment roll of 1893, and the Chickasaw pay roll of 1893. In addition to these two payment rolls they also obtained what are known as the Ieshatubby and Maytubby rolls of 1893, these rolls being memoranda made by Commissioners Ieshatubby and Maytubby in 1893 of those Chickasaw Indians who were residing in the Choctaw Nation. All of the rolls so obtained by Commissioners Bixby and McKennon were procured from individuals who had said rolls in their possession, and the information which the Commissioners obtained at that time led to the con-

clusion that it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

The rolls above referred to were the only rolls of which the Commission could gain any knowledge. Having been repeatedly informed by representatives of both tribes that no tribal rolls of any description were in the executive offices, and being thoroughly satisfied that the tribal officials were sincerely endeavoring to aid the Commission in locating the missing rolls, there appeared to be no foundation upon which to obtain an order of the court.

After the receipt of departmental communication of October 23, 1902, the Commission at once addressed communications to the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, with which, for their information, were inclosed copies of the report of the Acting Commissioner of Indian Affairs of October 21, 1902. In these communications the Commission earnestly requested the chief executives of the two tribes that there be transmitted at the earliest practicable date all the rolls of the citizens of the two tribes in the possession of the tribal authorities, made prior to the leased district payment roll of 1893, and such other data as would be of benefit to the Commission in determining the rights of persons to be enrolled as citizens of these two nations.

No reply has ever been received by the Commission to the letter addressed to the governor of the Chickasaw Nation, but under date of November 8, 1902, the principal chief of the Choctaw Nation, in reply to our request, stated as follows:

"In reply I have to say that I have this day written Hon. E. H. Wilson, national secretary of the Choctaw Nation, directing him to be at Tuskahoma on Monday, the 17th instant, for the purpose of making a thorough search among the records of the national secretary's office to ascertain if such census or records of citizens of the Choctaw Nation, as suggested in the letter of the honorable Secretary of the Interior, can be found.

"It will require much time to go through the accumulated mass of ill-arranged papers in that office, and would suggest that you send a representative there to cooperate with the national secretary in the search.

"I am certainly interested in securing all the data bearing on the citizenship cases that can be obtained, and will lend every assistance in that direction."

In accordance with the suggestion of the principal chief of the Choctaw Nation the Commission directed one of its representatives to proceed to Tuskahoma on the 17th of November for the purpose, in conjunction with the national secretary of the Choctaw Nation, of making a thorough search of the records of the national secretary's office for data bearing upon the rolls of citizenship of the Choctaw Nation.

Another representative of the Commission was directed to proceed to Tishomingo, the national capital of the Chickasaw Nation, for the purpose of securing such records as he might find in the national secretary's office of that nation bearing upon the rights of persons to citizenship in the Chickasaw Nation.

The result of this investigation in the Chickasaw Nation has been the securing of portions of the 1878 annuity roll of said nation. together with several lists, undated, which apparently contain the names of both citizens and noncitizens. So much of the 1878 anunity roll as was obtained is now being arranged and indexed.

The representative of the Commission delegated to Tuskahoma secured a large number of incomplete lists of persons, undated and without any caption, and it is impossible from the condition in which the records were found to definitely state whether such lists were the rolls of the citizens of the Choctaw Nation.

Both of the representatives of the Commission delegated for this purpose spent several days in the office of the national secretaries of the two tribes and used every available means of securing any documents that might in any way materially assist the Commission in the determination of the rights of the persons to be enrolled as citizens of the two tribes.

After these investigations and the return of our representatives to the General Land Office, the Commission was in receipt of a letter under date of December 15, 1902, from Edward H. Wilson, the national secretary of the Choctaw Nation, as follows:

"Very much to my surprise, as well as pleasure, I found a complete set of the Choctaw census rolls, compiled in 1885. These rolls were found in a most inaccessible place and were discovered by accident. I forwarded same by to-day's express, and hope you will acknowledge receipt in due time."

The rolls referred to in the above communication were received by the Commission and are found to be in excellent condition, being separate bound rolls of each county in the Choctaw Nation, certified by the duly and lawfully appointed census enumerator to be a true census of the county, and bearing the certificate of the national secretary of the Choctaw Nation showing the date the same were filed for record in his office.

These rolls containing the names of probably between twelve and fourteen thousand citizens of the Choctaw Nation, are now being indexed by the Commission, and this work will presumably be completed within a very short time.

The Commission believes, as a result of this thorough investigation in this matter, that the only rolls secured which can in any manner be referred to or relied upon as even incomplete rolls of the citizens of these two nations are the 1885 census roll of the Choctaw Nation and the 1878 annuity roll of the citizens of the Chickasaw Nation.

It is impracticable at this time to determine and advise whether or not the name of Butler McGee, the alleged father of the applicant, Bettie Lewis, in the case under consideration, is found upon the 1885 census roll of the Choctaw Nation, but as soon as the index now being prepared is completed the Commission will report on the inquiry made in departmental letter of August 12, 1902.

In referring to those cases wherein the Department has affirmed the decision of the Commission refusing the application of persons therein for enrollment as citizens of the Choctaw and Chickasaw nations, the Commission believes that in none of these cases will it be found that the applicants or their parents ever obtained any tribal recognition as citizens of these two tribes, and that the greater number of applications were made by the persons in the belief that the possession of Indian blood was the only requisite to their recognition and enrollment as citizens of these two nations. In those cases already affirmed by the Department, however, the Commission will make an investigation of such rolls and papers as have recently come into its possession and will make report to the Department in all cases in which it is found that the names of the applicants or their ancestors appear thereon.

The Commission has further to report that in the cases which are now, and in the future will be, forwarded to the Department, the statements as to tribal recognition will include in the Choctaw Nation an examination of the 1885 census roll, the 1893 leased district payment roll, and the 1896 census roll; and in the Chickasaw Nation the partial 1878 annuity roll, the 1893 leased district payment roll, and the 1896 census roll, the only rolls which the Commission has been able to secure after a thorough and most painstaking investigation of this matter.

Respectfully,

TAMS BIXBY,
Acting Chairman.
T. B. NEEDLES,
Commissioner.
C. R. BRECKINRIDGE,
Commissioner.

Through the Commissioner of Indian Affairs.

VII. Whether the records of the Department and the Commission to the Five Civilized Tribes show that any person whose name appears on any tribal roll of the Choctaw and Chickasaw tribes, or his or her descendants, have been denied enrollment on the "final citizenship rolls" of said tribes, and denied the right to share in the tribal property, and approximately how many have been so denied.

CHOCTAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Choctaw Nation has been denied, the names of 675 have been found upon the official rolls (see Item III) of said nation or are the minor descendants of persons so enrolled.

Of this number 130, whose enrollment had been granted by the Commissioner, were disapproved by the Department in accordance with an opinion of the Attorney-General of the United States of February 19, 1907, and the names of 203, whose enrollment had already been approved, were canceled by the Department under the same opinion.

The applications that were made for the enrollment of 150 of the 675, referred to above as being denied, were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or through field parties operating

in the nation and, as no personal applications had been made by such persons, it was believed that they were dead or had removed from the Indian Territory.

CHICKASAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Chickasaw Nation had been denied the names of 87 have been found upon the official rolls of the Chickasaw Nation, or are the minor descendants of persons so enrolled.

Of this number 19 whose enrollment had been approved were canceled by the Department under an opinion of the Attorney-General of the United States of February 19, 1907, and the applications that were made for the enrollment of 50 persons were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or from field parties operating in that nation, and as no personal applications had been made by such persons it was believed that they were either dead or had removed from the Indian Territory.

CHOCTAW FREEDMEN.

The records of the Commissioner to the Five Civilized Tribes show that the names of 65 persons whose enrollment had been denied appear upon the roll of Choctaw freedmen furnished by the Choctaw Nation, or are the minor descendants of persons so enrolled.

It is impossible to ascertain from the records of this Office the descendants of persons whose names appear upon the tribal rolls of the Choctaw and Chickasaw nations, other than minor descendants who are enrolled with them upon such rolls.

The names of all applicants for enrollment were checked with the rolls of the Choctaw and Chickasaw nations which were considered official, as named in Item III, before decisions were rendered, and their names have again been checked with these rolls in the preparation of this data.

The memorandum rolls hereinbefore referred to, from which the census rolls were made, and all other parts of rolls in the possession of this Office, contain many names which have been lined out with ink or pencil, names interlined in pencil or with ink of a different kind from that used in the preparation of the rolls, and no information could ever be secured from the tribal officials tending to show by whom or under what authority such corrections and interlineations were made.

No rolls were ever approved by the Choctaw and Chickasaw tribal authorities, as in the case of the 1890 authenticated Creek roll or the 1880 authenticated Cherokee roll, and this Office has continuously received protests from the Choctaw and Chickasaw nations against the enrollment of persons whose names were alleged to have been placed on the rolls through fraud or without authority of law.

A special effort is now being made to check the names of applicants with the memorandum rolls, above referred to, but, owing to the difficulties already described, which are attendant upon this work, and the fact that none of these books are indexed, this work will con-

sume considerable time, and, inasmuch as an early report was requested, the information already secured is forwarded. If a further report is required, this Office will then be better able to furnish same.

IX. A copy of the notice issued by the Commission to the Five Civilized Tribes under the act approved June 28, 1898, directing all persons claiming any rights in the Choctaw and Chickasaw nations to appear before said Commission at certain specified places and times for examination and identification.

The following is a copy of the notice issued in the year 1898:

[Dawes Commission, census notice.]

CHICKASAW NATION.

The Dawes Commission will be at the places, on the dates named below, for the purpose of taking a census of the Chickasaw Indians by blood and Chickasaw freedmen.

Heads of families may enroll the members of their families and minor children who made their homes with them. Guardians may enroll their wards.

Stonewall, September 1, 2, 3, 5, 6, 7, and 8.
Pauls Valley, September 12, 13, 14, 15, and 16.
Ardmore, September 19, 20, 21, 22, and 23.
Tishomingo, September 26, 27, 28, 29, and 30.
Lebanon, October 3, 4, 5, 6, and 7.
Colbert, October 10, 11, 12, 13, and 14.

This work is done preparatory to making final rolls of Chickasaw citizens and freedmen under the provisions of the recent act of Congress, viz: * * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto and their descendants born since such rolls were made. * * * No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said Commission and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes and persons who should be enrolled to appear before said Commission for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct this work.

* * * * * * *

It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in 1866 between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty.

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

* * * * * * *

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws * * * shall alone constitute the several tribes which they represent.

The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury and on conviction thereof shall be punished as for such offense.

Persons claiming rights as Chickasaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case witnesses will in like manner be examined and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
Acting Chairman.
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

At the conclusion of the appointments provided for in the foregoing notice, upon the request of interested persons appointments were held in the Chickasaw Nation at Duncan October 17, 18, and 19, 1898, and at Chickasha October 20, 21, and 22, 1898, in order that the citizens living in the vicinity of those two towns might be afforded opportunity to appear without incurring extra expense.

The following is a copy of a notice issued in the year 1899:

[Census notice.]

CHOCTAW NATION.

The Commission to the Five Civilized Tribes will be at the places on the dates named below for the purpose of taking a census of the Choctaw Indians by blood and Choctaw freedmen.

Heads of families may enroll the members of their families and minor children who make their homes with them. Guardians may enroll their wards.

Alikchi, from Tuesday, April 18, to Thursday, May 4, 1899, inclusive.
Goodland, from Monday, May 8, to Friday, May 12, 1899, inclusive.
Antlers, from Monday, May 15, to Friday, May 19, 1899, inclusive.
Tuskahoma, from Monday, May 22, to Friday, May 26, 1899, inclusive.
Talihina, from Monday, May 29, to Friday, June 2, 1899, inclusive.
Wister, from Monday, June 5, to Friday, June 9, 1899, inclusive.
Oak Lodge, from Monday, June 12, to Friday, June 16, 1899, inclusive.
Red Oak, from Monday, June 19, to Friday, June 30, 1899, inclusive.
Hartshorne, from Monday, July 3, to Friday, July 7, 1899, inclusive.
Calvin, from Monday, July 10, to Friday, July 14, 1899, inclusive.
Durant, from Monday, July 17, to Friday, July 21, 1899, inclusive.
Caddo, from Monday, July 24, to Friday, July 28, 1899, inclusive.
Atoka, from Monday, July 31, to Friday, August 11, 1899, inclusive.
South McAlester, from Monday, August 14, to Friday, August 25, 1899, inclusive.
South Canadian, from Monday, August 28, to Thursday, August 31, 1899, inclusive.

This work is done preparatory to making final rolls of Choctaw citizens and freedmen under the provisions of the act of Congress approved June 28, 1898, viz:

* * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without the authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw * * * citizenship under the treaties and the laws of said tribes. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may thereby be identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments, and custodians of such rolls and records, to deliver the same to said Commission, and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be enrolled, to appear before said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work.

* * * * * * *

It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation and all their descendants born to them since the date of the treaty.

* * * * * * *

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

* * * * * * *

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavits or papers, to be filed, or oath taken, before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense.

Persons claiming rights as Choctaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case, witnesses will in like manner be examined, and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

The following is a copy of a second notice issued in the year 1899:

FINAL NOTICE TO CHOCTAW AND CHICKASAW CITIZENS.

* * * * * * *

The Commission to the Five Civilized Tribes again gives notice of its appointments for the enrollment of Choctaw and Chickasaw citizens. Those who have not been enrolled must be represented by heads of families at one of the places named below without fail.

The attention of Chickasaw citizens is especially called to the necessity of presenting themselves for enrollment at one of these appointments, as the Commission will not do further census work in the Chickasaw Nation.

* * * * * * *

Hartshorne, Tuesday, August 1, to Saturday, August 5, inclusive.
Calvin, Monday, August 7, to Friday, August 11, inclusive.
Durant, Monday, August 14, to Friday, August 18, inclusive.
Caddo, Monday, August 21, to Friday, August 25, inclusive.
Atoka, Monday, August 28, to Saturday, September 2, inclusive.
South McAlester, Monday, September 4, to Wednesday, September 13, inclusive.
South Canadian, Thursday, September 14, to Saturday, September 16, inclusive.

TAMS BIXBY,
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

The following is a copy of a notice issued in the year 1900 relative to the enrollment of Choctaws and Chickasaws:

[Department of the Interior, Commission to the Five Civilized Tribes.]

ENROLLMENT NOTICE.

The Commission to the Five Civilized Tribes will hear applicants for enrollment as citizens of the Choctaw and Chickasaw nations at Atoka, Choctaw Nation, from Monday, June 4, to Friday, June 8, inclusive; Colbert, Chickasaw Nation, from Monday, June 11, to Saturday, June 16, inclusive.

Any and all citizens who have not already made application for enrollment should appear at one of the points named above, without fail, as only those whose names appear on the final rolls can share in allotment.

TAMS BIXBY, Acting Chairman.

The following is a copy of the notice issued in the year 1902:

[Department of the Interior, Commission to the Five Civilized Tribes.]

At a special election held in the Choctaw and Chickasaw nations September 25, 1902, there was ratified by the citizens of these two tribes an act of Congress approved July 1, 1902, and entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

This agreement, as so ratified and now effective, provides that the rolls of the citizens of the Choctaw and Chickasaw nations and Choctaw and Chickasaw freedmen shall be made as of the date of the final ratification of such agreement.

Section 34 of said agreement provides as follows:

"During the ninety days first following the date of the final ratification of this agreement the Commission to the Five Civilized Tribes may receive applications for enrollment only of those persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as 'delinquents,' and such intermarried white people as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement, but the application of no person whomsoever for enrollment shall be received after the expiration of the said ninety days."

For the purpose of enrollment of those classes of persons as provided by section 34 above quoted, the Commission to the Five Civilized Tribes will be in session at the following designated places and on the dates given:

Chickasha, Chickasaw Nation, October 15 to 17, inclusive.
Pauls Valley, Chickasaw Nation, October 20 to 24, inclusive.
Ardmore, Chickasaw Nation, October 27 to 31, inclusive.
Tishomingo, Chickasaw Nation, November 3 to 7, inclusive.
Ada, Chickasaw Nation, November 10 to 14, inclusive.
Atoka, Choctaw Nation, November 17 to 21, inclusive.
Kullituklo, Choctaw Nation, November 24 to 28, inclusive.
Antlers, Choctaw Nation, December 1 to 5, inclusive.
Tushkahoma, Choctaw Nation, December 8 to 12, inclusive.
Wister, Choctaw Nation, December 15 to 19, inclusive.
South McAlester, Choctaw Nation, December 22 to 24, inclusive.

After December 24, 1902, the Commission will be without authority to receive the application of any person whomsoever for enrollment as a citizen or freedman of either the Choctaw or Chickasaw Nation.

The appointments above designated will be the last opportunity afforded citizens of the Choctaw and Chickasaw nations to present their applications.

It is necessary that the status of all intermarried citizens on September 25, 1902, be determined, and citizens by intermarriage should avail themselves of this opportunity to present testimony showing their status on that date.

The Commission will also at these appointments receive applications for the enrollment of infant children born prior to September 25, 1902, and proofs of death of citizens and freedmen previously listed for enrollment but who died prior to said date.

No original applications for the enrollment of persons whose names are not on the tribal rolls or applications for identification as Mississippi Choctaws will be heard at these appointments.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
TAMS BIXBY, *Acting Chairman.*

MUSKOGEE, IND. T., *October 4, 1902.*

X. Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June 28 were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record.

It is a matter of general knowledge that all applicants appearing before the Commission to the Five Civilized Tribes at its appointments in the field during the years 1898 and 1899 were examined under oath, and the records of this office show that their testimony was reduced to writing, either in the form of stenographic notes or recorded on census cards made in conformity with their statements.

During the appointments held in the years 1898 and 1899 in all cases where the right of the applicant to enrollment was contested by the Choctaw and Chickasaw nations, or where testimony as to the right to enrollment was deemed necessary, the same was reported by stenographers and the testimony made a part of the record in the respective cases.

All applicants for enrollment as Choctaws and Chickasaws and Choctaw and Chickasaw freedmen who have appeared before the Commission or the Commissioner to the Five Civilized Tribes since the appointments in the field in the year 1899 have been sworn, and their testimony, taken under oath, reported by stenographers and made a part of the record in each case.

XI. Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act approved June 28, 1898, were examined by said Commission under oath solely as to their negro blood and descent, and their testimony reduced to writing and made of record.

The records in the possession and custody of the Commissioner to the Five Civilized Tribes do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act of Congress of June 28, 1898, were examined solely with respect to their negro blood and descent, but their testimony was reduced to writing in the manner stated under item numbered X.

The records of this office show that, in some instances, persons who were descendants of slaves of Choctaw or Chickasaw Indians, and who claimed right to enrollment as citizens by blood, had applications pending for enrollment both as citizens by blood and as freedmen.

XII. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before said Commission under the provisions of the act of June 28, 1898, were examined under oath and their statements reduced to writing and made of record

The records of this office show that in all cases of intermarried persons and persons whose right to enrollment was contested by the nations, the testimony of the applicant himself, as well as that of any witnesses who could be secured, was taken in shorthand and transcribed and made a part of the record in the respective cases.

The records of this office further show that, as to many of the freedmen whose rights were not contested by the nations, no testimony was taken but only a memorandum, such as was made in the cases of citizens by blood whose rights to enrollment were not contested, the only difference being that in the cases of freedmen the memoranda were made by stenographers and afterwards transcribed, while in the cases of citizens by blood the memoranda were made in longhand by the examiner himself or by a clerk. In both cases the memoranda were made a part of the record.

As heretofore stated, with reference to the item numbered X, since the beginning of the year 1900 all applicants of whatever class appearing before the Commission to the Five Civilized Tribes have been examined at length and their testimony reduced to writing and made a part of the record in the respective cases.

XIII. Whether the records in the possession of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as "freedmen" and denied enrollment as Indians, regardless of the quantum of their Indian blood.

The records of this office do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as freedmen and denied enrollment as Indians regardless of the quantum of Indian blood. According to the well-known custom of Indian tribes, the Choctaw and Chickasaw Indians trace their descent through the mother, and persons of mixed Indian and negro blood who derived their Indian blood through the mother have, regardless of the quantum of Indian and negro blood, been enrolled as citizens by blood.

In cases where the Choctaw or Chickasaw blood was derived through the father, and evidence of the marriage to the negro mother shown, the children have been enrolled as citizens by blood.

XIV. Whether the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of persons of mixed Choctaw or Chickasaw Indian and white blood.

The records of this office do not show that the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of mixed Choctaw or Chickasaw Indian and white blood, but the question considered in the determination of the right of such persons to enrollment was that of residence and the tribal recognition and tribal enrollment of such persons or their parents.

XV. The number of acres and the appraised value thereof of unselected and unallotted lands in the Choctaw and Chickasaw nations, respectively.

The unallotted area in the Choctaw Nation amounts to, approximately, 2,164,000 acres, which includes the area of, approximately, 1,373,000 acres affected by the proposed forest reserve, leaving subject to allotment, approximately, 791,000 acres, the appraised value of which is, approximately, $1,914,000.

The unallotted area in the Chickasaw Nation amounts to, approximately, 818,000 acres, the appraised value of which is, approximately, $3,720,000.00.

XVI. Whether the order issued by the Hon. Ethan Allen Hitchcock, Secretary of the Interior, directing the Commission to suspend "all selections and the issuance of patents" to certain timber lands in the Choctaw and Chickasaw nations has been rescinded in whole or in part.

The instructions of the Secretary of the Interior of December 8, 1906 (I. T. D. 24490-1906), directing this office to "suspend all selections and the issuance of patents within the area indicated on the inclosed map until further advised," were modified by the instructions of the Secretary of the Interior of January 12, 1907 (I. T. D. 354, 442-1907), directing "that the lands within the limits of the map transmitted herewith marked 'green,' which have not been duly allotted or selected by members of the Choctaw and Chickasaw nations, are reserved from allotment until March 4, 1907, unless previously changed or modified, in order that in the meantime Congress may consider the recommendation of the Agricultural Department that a national forest reserve be established within the area thus reserved."

No further action having been taken prior to March 4, 1907, the Commissioner to the Five Civilized Tribes, on March 9, 1907, addressed the following telegram to the Secretary of the Interior:

Referring to departmental letter of January twelve, nineteen seven, I. T. D. four hundred forty-two and three hundred fifty-four, nineteen seven, reserving from allotment or selection by members of the Choctaw and Chickasaw nations certain land in the Choctaw Nation as a tentative forest reserve until after March fourth, nineteen hundred seven, requests instructions as to whether this land is now subject to allotment by citizens of the Choctaw and Chickasaw nations.

In reply thereto there was received, on the same date, the following telegram from the Secretary of the Interior:

Answering telegram ninth instant; allow no allotments of land within the reservation referred to by you until further instructed;

which telegram was confirmed by departmental letter of March 11, 1907 (I. T. D. 8442–1907).

No further instructions relative thereto have been received.

In accordance with the instructions contained in the letter calling for this report and in Indian Office telegram of the 8th instant, an estimate has been procured of the number of pages required, and the cost thereof, to have printed a copy of the tribal rolls in the possession of this Office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations.

Under item numbered II has been given a complete description of the rolls and memoranda rolls in the custody and possession of the Commissioner to the Five Civilized Tribes, which appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations, from 1880 to 1900, inclusive, while under item numbered III has been given a list of the official rolls used by this Office in the preparation of the final rolls of the Choctaw and Chickasaw nations, and the estimate is based upon the data so given. The 1878 Chickasaw annuity roll was not particularly described under item numbered II, as it was prepared prior to the year 1880, but has been taken into consideration in making the estimate in question. This roll is manuscript in form, with pages 8 by 13 inches in size, 30 lines to a page, and the names of Indians appear upon 81 pages thereof.

The several rolls listed under items numbered II and III are not uniform in size, nor as to the information with reference to the individuals and the families listed therein, and, in many particulars, are not systematic in their arrangement. These rolls have also, to a large extent, been poorly written, many corrections noted thereon in ink or pencil, and many names appear to have been entirely stricken from the rolls by the person or persons having possession of said rolls prior to their delivery to this Office.

It has been found difficult, in this short time, to make an accurate count of the names contained in all of these rolls, but there has been procured from a local printer an estimate of the number of pages these rolls would make of printed matter, if printed in brevier and on pages the size of that used in Government reports, together with an estimate of the cost thereof.

It has been roughly estimated that the rolls, if printed in brevier, will, including the proper headings, cover a total of approximately

2,000 pages, and will cost approximately $4,500. The printer, in furnishing this approximation, based his estimate upon a total of 100 complete copies of said rolls and expressed it as his opinion that many pages of the rolls could not be reproduced if set in brevier and on pages the size of those used in Government reports.

Attention is particularly called to the fact that on account of the unsatisfactory condition of these rolls it will be impossible in a very large number of instances to ascertain the correct spelling of the names, and such names would necessarily have to be omitted from any printed copy thereof that might be made.

Respectfully,

J. G. WRIGHT, *Commissioner.*

The COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 25, 1899.

The COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T.

GENTLEMEN: After informal conference between the Department, this office, and Mr. McKennon, of your Commission, and after a further careful consideration of the several acts of Congress conferring authority upon the Commission and prescribing your duties, as construed in the opinion of the Assistant Attorney-General for this Department, dated March 17, 1899, relative to the enrollment of the citizens of the various Five Civilized Tribes in the Indian Territory, the conclusion is reached, and you are instructed as follows:

First. The authority of your Commission to enroll persons making application for the first time, and not previously recognized at citizens in any of said nations, expired with the time limited in the act of June 10, 1896, and there now exists no authority in the Commission to enroll any person as a citizen of any of said nations whose name does not appear upon some roll of the nation in which such person may claim rights of citizenship (and in the Cherokee Nation such persons must show that they had been enrolled on the rolls designated as being confirmed in the act of June 28, 1898), and such as may show that they are descended from parties whose names appear on such rolls, born after the preparation thereof; also such as may have been admitted by the Commission to enrollment under the authority granted it over the subject in the act of 1896, above referred to, or by the courts on appeal from the Commission.

Second. The Commission has authority to remove from any tribal roll all persons whose names were placed thereon by fraud or without authority of law, and is authorized to enroll only such as have lawful right thereto, among whom are those white persons who are entitled to Choctaw and Chickasaw citizenship under the laws and treaties of such tribes.

Third. In addition to your report of Mississippi Choctaws identified by you, already submitted, you will, where Mississippi Choctaw Indians or their descendants may have removed from the State of Mississippi to and settled within the bounds of the Choctaw and Chickasaw country, before completion of the rolls, and appear before

you for identification, make a record of the facts, upon their testimony, taken before you, and that of other witnesses when deemed necessary, with a list of their names and the names of their children living with them and born in lawful wedlock, and such description of them as may be necessary for their identification under act of Congress of June 28, 1898, and report same through this office, together with your decision as to their right to identification as persons coming within the provisions of article 14 of the treaty of 1830, between the Choctaws and the United States, for determination by the Department.

The foregoing outlines your authority to enroll persons in the Five Civilized Tribes as citizens thereof and describes the classes of persons who, under the law as interpreted by this Department, are entitled to enrollment.

The rolls as made up by your Commission must, to become final, receive the approval of the Secretary of the Interior. It will therefore be necessary for you to make a record in all cases sufficient to enable this office and the Department to take intelligent action in the premises, and especially in those cases where your decision either for or against the right of any person to have his name appear upon the rolls is complained of.

For the purpose of this record you will require each applicant for enrollment to present himself in person before the Commission at one of its appointments within the tribe in which such applicant claims right to enrollment, for examination, under oath, his statements to be taken down by the Commission, upon which the Commission will determine his right to enrollment, and such record and action of the Commission will be preserved and transmitted with the rolls to be considered by this office and the Department when the rolls made by the Commission are submitted for the approval of the Secretary of the Interior.

These instructions do not apply for the guidance of your Commission in making the enrollment of the freedmen of the several tribes, there being special provisions contained in the statute which are deemed sufficient for your guidance in such matters.

The instructions contained herein will take the place of all other instructions or directions heretofore given you in particular cases reported to this Office, and will govern you in performing all duties to which the instructions given herein could relate.

Very respectfully,

W. A. JONES,
Commissioner.

Department of the Interior, August 8, 1899.
Approved.

THOS. RYAN, *Acting Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 17, 1899.

The honorable the SECRETARY OF THE INTERIOR.

SIR: With your letter of December 8, 1898, you transmitted letters of the Commission to the Five Civilized Tribes and of the Commis-

sioner of Indian Affairs, relating to the question of citizenship in such tribes and the extent of the authority of said Commission and the Secretary of the Interior in the premises. After referring to the letters submitted and the acts of Congress touching the question, your letter proceeds:

I have to ask that you will consider the acts referred to herein, the correspondence inclosed herewith, and advise the Department whether the Secretary of the Interior is authorized to consider any applications that may be tendered by persons claiming to be citizens of either of the Five Civilized Tribes, whose applications are rejected by said Commission because not found on any tribal roll or for any other reason whatever. I desire to be further advised whether the Commission to the Five Civilized Tribes is authorized to receive and file any application from any person claiming membership in either of the said Five Civilized Tribes whose name is not found by the said Commission on the rolls of the respective tribe of which the person claims membership, and also whether under the provisions of said acts, or under his supervisory authority, the Secretary of the Interior may instruct the Commission to the Five Civilized Tribes to receive and act upon any application tendered to said Commission by any person or persons claiming membership under either of said tribes and allow an appeal from the action of said Commission by the party or parties interested adversely affected thereby.

To comply with these requests it will be necessary to examine the statutes prescribing the duties of the Commission to the Five Civilized Tribes respecting claims to citizenship.

Prior to the creation of this Commission the respective tribes controlled the question of citizenship, subject to the conditions of the various treaties between the United States and such tribes.

The Commission to the Five Civilized Tribes was created by the act of March 3, 1893 (27 Stat., 612, 645), "to enter into negotiations with" the Indians "for the purpose of the extinguishment of the national or tribal title to any lands" within the Indian Territory held by them, which extinguishment was to be accomplished either by cession of the lands to the United States, or by the allotment and division of the same in severalty among the Indians entitled thereto, or by such other method as might be agreed upon, to be carried on under regulations and directions to be prescribed by the President, through the Secretary of the Interior, and the Commissioners were to report their transactions and the progress of their negotiations to the Secretary of the Interior.

The act of June 10, 1896 (29 Stat., 321, 339), provides as follows:

That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: *Provided, however*, That such application shall be made to such commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided further*, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose rights thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in

any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided*, That if the tribe, or any person, aggrieved with the decision of the tribal authorities or the commission provided for in this act, it or he may appeal from such decision to the United States district court: *Provided, however*, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

That the said commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of the citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

The commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as the final judgment of the duly constituted authorities.

By the act of June 7, 1897 (30 Stat., 62, 84), it was provided: "That the words 'rolls of citizenship,' as used in the act of June 10, 1896, making appropriations for current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1897, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, or the commission under the act of June 10, 1896. And all other names appearing upon such rolls shall be open to investigation by such commission for a period of six months after the passage of this act. And any name appearing on such rolls and not confirmed by the act of June 10, 1896, as herein construed, may be stricken therefrom by such commission where the party affected shall have ten days' previous notice that said commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation: *Provided also*, That anyone whose name shall be stricken from the roll by such commission shall have the right of appeal, as provided in the act of June 10, 1896.

The act of June 28, 1898 (30 Stat. L., 495, 502), further defined the duties of this Commission as follows:

SEC. 21. That in making the rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of 1880 (not including freedmen) as the only roll intended to be confirmed by this and preceding acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are found thereon; and all persons who have been enrolled by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities and who were minors when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls, and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws.

* * * * * * *

Said commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes.

* * * * * * *

The several tribes may, by agreement, determine the right of persons who, for any reason, may claim citizenship in two or more tribes and to allotment of lands and distribution of moneys belonging to each tribe; but if no such agreement be made, then such claimant shall be entitled to such rights in one tribe only, and may elect in which tribe he will take such right; but if he fail or refuse to make such selection in due time he shall be enrolled in the tribe with whom he has resided and there be given such allotment and distributions, and not elsewhere.

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however*, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States Court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said Commission, and on their refusal or failure to do so to punish them as for contempt, as also to require all citizens of said tribes and persons who should be so enrolled to appear before said Commission for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work.

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws.

The Indian appropriation act, approved July 1, 1898 (30 Stat., 571, 591), contains the following provision:

That said Commission shall continue to exercise all authority heretofore conferred on it by law.

Appeals shall be allowed from the United States courts in the Indian Territory direct to the Supreme Court of the United States to either party in all citizenship cases and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship or the allotment of lands in the Indian Territory, under the rules and regulations governing appeals in said court in other cases: *Provided*, That appeals in cases decided prior to this act must be perfected in one hundred and twenty days from its passage, and in cases decided subsequent thereto, within sixty days from final judgment; but in no case shall the work of the Commission to the Five Civilized Tribes be enjoined or suspended by any proceeding in, or order of, any court, or of any judge, until after final judgment in the Supreme Court of the United States. In case of appeals as aforesaid, it shall be the duty of the Supreme Court to advance such cases on the docket and to dispose of same as early as possible.

The Indian appropriation act, approved March 1, 1899 (Public No. 104), also provides:

That said Commission shall continue to exercise all authority heretofore conferred upon it by law.

The act of June 10, 1896, supra, contained no provision that the rolls of citizens made by the Commission should be subject to the approval of the Secretary of the Interior. It provided that appeals might be taken to the United States district court from the Commission's decision upon any application for citizenship. This necessarily excluded any other mode of securing a review of the Commission's action, and in the absence of an appeal to the court their decision was final. The rolls of citizens prepared by the Commission were by that act "made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts." The act further provided:

The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities.

There can be no question as to the effect of this act. It made the Commission's determination as to the names to be enrolled a finality, except where an appeal should be taken to the court, and there the court's decision was declared final. No other tribunal or officer

had any authority to revise or change the rolls as prepared by the Commission.

The act of June 7, 1897, supra, made no change in this point. It defined the words "rolls of citizenship," used in the act of 1896, provided that all names appearing upon the rolls and not included in the definition given should be open to investigation by the Commission for a period of six months after the date of said act, and that any name on said rolls not confirmed by the act of 1896 might be stricken off, the party having a right of appeal to the United States court under the act of 1896.

The act of June 28, 1898, supra, prescribes the manner in which the Commission is to make rolls of citizenship of the several tribes, and that all names found to have been placed upon the tribal rolls by fraud or without authority of law shall be eliminated, and then declares:

> The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their decendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

By the act of 1896, applications for citizenship were required to be made to the Commission within three months after the passage of that act, and to be passed upon by the Commission within ninety days after made. Provision was also made for applications to the court or committee of the several tribes, which were to be presented within three months and passed upon within thirty days. After the expiration of six months the Commission was to make rolls of citizenship, adding the names of citizens whose right might be conferred under that act. After the expiration of the time fixed no new application for citizenship could be received, and the action of the Commission upon those made within the time fixed was final, in the absence of an appeal to the court. The act of 1897 did not provide for new applications for citizenship. It defined the words "rolls of citizenship" used in the act of 1896, and directed that all names appearing upon the rolls, not coming within that definition, should be open to investigation by the Commission for a period of six months after the passage of said act. Neither did the act of 1898 make any provision for new applications for citizenship. The Commission was authorized and directed to enroll the persons indicated and to investigate the right of all other persons whose names are found upon any tribal roll, and to omit all such as may have been placed there by fraud or without authority of law. They were not authorized to add any name not found upon some roll of the tribe, except those of descendants of persons rightfully upon some roll and persons intermarried with members of the tribes and therefore lawfully entitled to enrollment.

The rolls so made by the Commission are to be final "when approved by the Secretary of the Interior." This approval being required to give the quality of finality to the rolls, it follows necessarily that the Secretary of the Interior is clothed with some legal discretion and authority in granting or withholding his approval, and that he has a power of supervision and review over the action of the Commission in preparing the rolls. This power of supervision and review extends to everything done by the Commission in the way of placing names

upon or withholding names from the rolls which depends for its final sanction and effect upon the approval of the rolls by the Secretary of the Interior, but it does not include or authorize a reexamination of a decision of the Commission from which an appeal to the court was provided for, and which therefore became final in the absence of such an appeal, nor does it include or authorize a reexamination of a decision of the court upon such an appeal. It does, however, enable the Secretary to see that any individual entitled to enrollment under any such final decision is placed upon the roll, and that any name placed thereon in disregard of any such final decision is stricken therefrom.

In those cases which are appealed to the Supreme Court under the act of July 1, 1898, supra, the action of the Supreme Court, or such decision as may be rendered by the district court in pursuance thereof, becomes the final decision, notwithstanding the provision in the act of 1896 giving finality to the original decision of the district court.

In the course of this opinion all the questions presented by your letter are believed to be answered.

The papers submitted are herewith returned.

Very respectfully,

WILLIS VAN DEVANTER,
Assistant Attorney-General.

Approved, March 17, 1899.
THOMAS RYAN,
Acting Secretary.

O

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 507.

ISSUE OF CERTIFICATES BY WATER USERS' ASSOCIATIONS.

Mr. FLINT presented the following

HEARINGS BEFORE THE COMMITTEE ON IRRIGATION, UNITED STATES SENATE.

MAY 22, 1908.—Ordered to be printed.

UNITED STATES SENATE,
COMMITTEE ON IRRIGATION,
May 18, 1908.

STATEMENT OF MR. FREDERICK H. NEWELL, DIRECTOR OF THE RECLAMATION SERVICE.

Present: Senators Ankeny (chairman), Nixon, Flint, Newlands, Borah, Sutherland, the Secretary of the Interior, and the Director of the Reclamation Service.

The CHAIRMAN. Senator Flint, will you state the object of the hearing?

Senator FLINT. The object, as I understand it, is to take the testimony of the Secretary of the Interior and the Director of the Reclamation Service in reference to the issue of certificates by the Water Users' Association, which certificates are approved by the Reclamation Service, and to ascertain to what extent the Government is liable thereunder, or sought to be made liable, and whether or not this policy should have the approval of Congress, if such approval is necessary, and whether or not these certificates are authorized by law.

The CHAIRMAN. Who wishes to speak on the subject?

Senator BORAH. Where is the certificate that has been issued?

(Certificate produced and read by committee, as follows:)

CERTIFICATE No. 00, MINIDOKA WATER USERS' ASSOCIATION (INCORPORATED UNDER THE LAWS OF THE STATE OF IDAHO).

This certificate, issued this ——— day of ——, 190—, is evidence that work has been done or materials or supplies furnished to the value of $—— on the ——— ——— project, ———.

The said amount will be credited on the instalments due, or to become due, for a water right on lands held or entered under the said project under the reclamation act. Such credit may be allowed separately for the portion of the installment on account of the building charge or on account of the portion of the instalment for operation and maintenance on such lands for the current

or prior years, and for operation and maintenance for subsequent years, subject to future determination of the amount of such operation and maintenance charges.

This certificate, if lost, can not be replaced; and, if altered in any way, will not be accepted.

——— ——— Association,

[CORPORATE SEAL.] By ——— ———,

Secretary.

Registered ———, 190—.

———, ———,

Engineer, U. S. Reclamation Service.

ACCEPTANCE.

(To be filled in when surrendered.)

Surrendered by ——— ——— of ——— and accepted for credit on the charges payable on water-right application for ——— ———, as follows:

Face value of certificate..... $———
Cash paid..... ———
———
$———

Applied as follows:

Building charge for 190— to 190—, inclusive..... $———
Operation and maintenance charge for 190— to 190—, inclusive[a]..... $———
Total..... $———

——— ———,
Engineer, U. S. R. S., in charge,
——— *project*———.

Date ———, 190—.

Mr. NEWELL. Mr. Chairman, I will make a general statement in connection with these certificates. There seems to have been some misapprehension with regard to two points—the first is as to the purpose of the certificate, and the second as to the liability of the Government. The first point to be borne clearly in mind is that these certificates are issued in accordance with State laws and local customs. They are not in any sense a Government obligation or liability of the Government and do not reduce the cash return of the investment in reclamation work. These are the two points most misunderstood.

It is the custom in the West for the local water users to organize a corporation of a semipublic nature, and issue to the members shares of stock or certificates which give them a certain proportionate share or claim in the water. In this particular case the United States, acting through the Secretary of the Interior as a trustee for the reclamation fund, has built certain large works to a degree of completion where they are supplying water to a portion of the lands. There are people residing outside of the works who desire an extension to supply their lands. They say "we will pay our proportion of the cost of the work, if you will allow us."

The CHAIRMAN. On what basis, Mr. Newell?

Mr. NEWELL. On the basis of this agreement, Mr. Chairman. "If you will allow us to extend these works to our land, without extra cost to the Government." These certificates are issued as a convenient form of bookkeeping. The water user in turn pays to the

[a] NOTE.—If these charges are paid in advance, the final year should be left blank and payments will be credited in accordance with future determination of the charges.

Government the full amount which he owes as his proportionate share of the cash cost of the project.

The SECRETARY OF THE INTERIOR. Will you explain that the amount the water users owe to the Government is the same amount per acre as every other user—that there is no reduction to them.

Senator FLINT. Is this a correct statement of the case, Mr. Secretary: A man a resident in one of these irrigated districts receives in payment for his work of constructing an extension or lateral system, which is to be included in the main project, certificates of the Water Users' Association, and these certificates can be used the same as cash in the payment of any of the installments to the Government as they fall due on the entire project?

Mr. NEWELL. Not the same as cash.

Senator FLINT. Well, in fact, cash. He could take the certificate and turn it over to another man to use as payment for his amount due on the project for this year, say, so that instead of waiting for the ten full years to get paid for his work he could transfer his certificate to a man having a payment due this year and that man could turn it in as cash.

Senator SUTHERLAND. Are they payments for the work or evidence of the work?

Mr. NEWELL. Evidence of the work. Here is a man living a mile outside of the project. It will cost $50 to build a ditch to him. His charge for that water will be, say, $500 if we build this lateral ditch. He builds it himself after the Government engineer has approved the plan that it is built properly. A certificate of $50 is issued to him. He pays $450 in cash and turns in his certificate for $50.

Senator SUTHERLAND. That is to the extent to which he has aided the work he is permitted to receive and does get credit for it?

Mr. NEWELL. Yes; it is not that the Government is responsible for the amount, but it certifies that the work has been done in accordance with the plans. The Government does not redeem the certificate, but accepts it as evidence of the fact that certain work has been done. The certificates are cancelled and the portion of the system is incorporated in the entire system.

Senator NIXON. When completed?

Director NEWELL. When completed.

Senator SUTHERLAND. A man desires the water system extended. He has 50 acres. That would cost him $500. His lateral would cost $50. He is permitted to do it himself instead of having the Government do it, and one of these certificates to the extent of $50 is issued to him. When he comes to pay $500 for his water he may turn in as part of his payment this certificate for $50.

Director NEWELL. With this careful distinction, Senator, he turns it in and the secretary receives it as evidence that he has done an amount of work agreed upon in advance.

Senator SUTHERLAND. He is allowed a credit.

Director NEWELL. We make this distinction. Four hundred and fifty dollars has been expended and $450 comes back to the Treasury. The Treasurer of the United States knows nothing of this $50 work and does not want to know of it. The Comptroller of the Currency and the Comptroller of the Treasury also know nothing of it. The Land Office does not know of it, because it is not a charge against the

land, but it is a reduction of the charges that would have been made against the land if the Government had completed the system.

Senator SUTHERLAND. But you have undertaken a project to deliver water to the land, and the Government would have been obliged to construct the lateral and pay for it in cash and get it back from the user. Instead of paying cash to a third party, it issues a certificate to the party himself, so that in the end it really enables the Government to keep that much cash in the Treasury for the time being. Is that correct?

Director NEWELL. Yes, sir.

Senator FLINT. The only difference is that the Government would not do the work for the reason that there is not sufficient money in the fund?

Secretary GARFIELD. Yes, sir; because we have not the money for doing it.

Director NEWELL. The settlers of the West are demanding that they be allowed to finish the laterals at their own expense and incorporate them into the system which ultimately goes to them to operate and manage.

Senator BORAH. In other words, this is a scheme grown out of the situation in the West and out of the people's desire to do certain things which otherwise could not be done?

Director NEWELL. Yes, sir. It has been asked by the men who are making homes upon the land. They ask, "Why can not we be allowed to do this simple work and have a reduction on account of it?"

Senator FLINT. The end of it is that the man not only gets his laterals, but gets some cash for his work.

Director NEWELL. He gets no cash for his work, only a reduction in what he might otherwise be required to pay.

Senator FLINT. Well, in substance he does. These certificates will be floated around as cash in the community.

Secretary GARFIELD. How can they be, Senator?

Senator FLINT. They are just as good as cash to a man in the district.

Secretary GARFIELD. They are good only for one purpose, namely, to be presented by a person who has taken up land in the district to be used as a credit on what would otherwise be his annual installment.

Senator FLINT. For that purpose they are as good as cash?

Secretary GARFIELD. Yes, sir; for that purpose.

Senator FLINT. Follow that out. Here is a man who has only a small payment coming due. He has a certificate for $200 or $300 due him for work on one of these laterals. He goes to his groceryman and says: "Here, I owe you so much and I want credit for this certificate on the books." The grocer says, "All right." and he in his turn says to his banker, "I will sell you this certificate for 95 cents on the dollar." His banker accepts the offer. That groceryman can afford to sell at 95 cents, because he has made a good profit on his wares, so, as a matter of fact, they will start to circulate as a medium of exchange.

Senator BORAH. Yes; but they stop pretty quick, as you must have the beginning and end of the exchange arranged.

Secretary GARFIELD. These certificates would not be issued by the association to anyone but the water users themselves. They are

not issued for the ordinary and current charges in favor of people who are working. They are in favor of the owners who are by cooperation digging the ditches and have but a limited circulation.

Senator SUTHERLAND. Mr. Secretary, if I understand the certificate, the use of it is limited to the person to whom it is issued or to the person similarly situated. It may be used by any of the proprietors along the entire project. The language of it, after the preliminary part, is:

> The said amount will be credited on the installments due, or to become due, for a water right on lands held or entered under the said project under the reclamation act. Such credit may be allowed separately for the portion of the installment on account of the building charge or on account of the portion of the installment for operation and maintenance on such lands for the current or prior years, and for operation and maintenance for subsequent years, subject to future determination of the amount of such operation and maintenance charges.

That enables the man to whom the certificate is issued to transfer it to any user of water under the original project and to enable him to turn it in and get credit for it on the amount due.

Senator FLINT. If a certain number of these were issued and passed into the hands of the original proprietors under the project, would not the final result be that a number of these certificates would be turned in to pay for the water rights and thus cut down the amount of cash that comes in? Let me illustrate, if I can, this way: The project costs $500,000. Then add to the project $10,000, but that is issued in certificates. There is then $500,000 paid out and $500,000 paid in in cash; there is $10,000 of work done, represented by certificates, and $10,000 worth of certificates turned in.

Senator SUTHERLAND. Well, let us say, then, that the project cost $500,000. Fifty thousand dollars, under the law, must be paid each year by the water users. Add to that project, by reason of these collateral matters, $10,000 and issue certificates to the extent of $10,000. Suppose that all of these certificates pass into the hands of the original proprietors, namely, the persons liable for the $50,000. These people then pay in $40,000 in cash and $10,000 in certificates; so instead of being $50,000 in the Treasury there is $40,000 and $10,000 in certificates.

Director NEWELL. I think they would pay the $50,000 in cash, the $10,000 being for lateral extensions.

Senator SUTHERLAND. But, Mr. Newell, to the extent that these certificates passed into the hands of the original proprietors you cut down the amount of cash that the original proprietors pay.

Director NEWELL. Not quite, because the landowners still have to pay in cash the original amount expended in cash; in fact, the tendency is to increase the prompt return in cash of the amount originally expended by the Government, because lands which otherwise would lie idle are at once made productive and consequently are put on an immediate revenue-producing basis.

Senator FLINT. Suppose, as Senator Sutherland says, $50,000 was due the first year—that is one-tenth of the cost of the project. There would be one-tenth of the cost of the lateral due, so that there would be $51,000 due that year.

Director NEWELL. I think the whole $50,000 would be due the first year and you would have the $50,000 plus the cost of the lateral extension.

Senator FLINT. How are these laterals paid for?

Director NEWELL. If they are paid for in certificates by the association the certificates are turned in and credit given by the association which has made the contract.

Senator FLINT. Then a man that does the work and gets paid in a certificate can take the certificate and sell it to some one else, and the certificate can be turned in by the water users and the payment reduced to $40,000 in cash and $10,000 in certificates, or, on the other hand, it would be an actual purchase by the Government from these water users' associations of a plant, paying them in certificates equal to cash and they themselves doing the work.

Director NEWELL. I think the $10,000 for laterals built by the association would be turned in the first year. There would then be the $50,000 for the main project to go back to the Treasury.

Senator NIXON. Could not these certificates be made nontransferable?

Director NEWELL. They could be, but the object is to make them transferable among the members of the association. As a matter of fact, the custom in Utah, Idaho, and Montana is to issue these certificates to members free. They pass around inside the organization, which is a semipublic corporation. The demand by the settlers is that they shall be in the shape of readily transferable certificates.

Senator SUTHERLAND. I think your plan is a good one, and so far as I am concerned if there is any way in which it can be done I would be glad to help you if it is within the law.

Director NEWELL. Is there any provision of law to forbid it—either State or Federal?

Senator SUTHERLAND. I would say yes; there is a law against it; because the law contemplates that one-tenth of the entire amount of the cost of one of these projects shall be paid into the Treasury each year. I do not quite mean that, but one-tenth of the amount appropriated to the land brought under the project shall be paid in.

Director NEWELL. On that point a decision has been rendered that while the law says ten payments, it does not say ten equal payments. We must carefully distinguish between ten payments and ten equal payments.

Senator SUTHERLAND. Well, where the law says ten installments, do you not think it means ten equal installments?

Director NEWELL. There is a decision which says not.

Senator SUTHERLAND. What decision is that, Mr. Newell?

Director NEWELL. A decision which was rendered August 16, 1905 (34 L. D., p. 78).

Senator SUTHERLAND. Well, my understanding was that it was to be ten equal installments.

Director NEWELL. We obtained a decision on that point, namely, that the installments may not necessarily be equal.

Senator BORAH. Well, it is manifest that the law does not so provide. It says "not exceeding ten installments," not ten equal installments.

Director NEWELL. It is given in one of the annual reports—the reference I mean.

Senator FLINT. I believe there is no law to prohibit your doing this, but I am opposed to having the Government committed in any way to the certificates. I am perfectly willing that the water users'

associations should go ahead and issue these certificates so long as the Government is not mixed up with it.

Senator BORAH. Well, they could not issue them unless some one certified to them.

Senator FLINT. Then, if it is necessary for the Government to do so, I am opposed to the proposition.

Senator BORAH. On what ground?

Senator FLINT. On the ground that it is against public policy.

Senator SUTHERLAND. If Mr. Newell is correct, then these would not be opposed to the law. I had been proceeding on the theory that the installments must be equal installments.

Senator NEWLANDS. But Senator Flint takes the position that it is against public policy to use these certificates practically as currency.

Senator BORAH. I do not believe that they will come into any general use as currency.

Senator FLINT. Well, just as certainly as you are sitting there, they will be. I have seen certificates of United States marshals floating around in the West practically as cash. If you can say that a paper reading "This certifies that John Smith has served ten days as a juror and is entitled to $2 per day, and will be paid, etc. The amount due is $20. Signed William Jones, United States Marshal," and that floats right around the country as currency, then just so surely will these certificates be similarly used.

Senator BORAH. But you can't get any money on these.

Director NEWELL. The Water Users' Association is a semipublic corporation which at its infancy is composed of one thousand or more men, coming from every part of the United States, sometimes speaking different languages. The Secretary of the Interior makes a contract with that association, and at the outset must assume a certain control. Gradually, as the members of the Water Users' Association acquire title to the lands, the relations of the Department become less and less restrictive. In the initial stages it is necessary that the Secretary of the Interior approve the acts of the association and the contracts. For that reason the approval is made by the resident engineer to show that the contract entered into to build certain ditches has been fulfilled. The approval goes no further than to show that the works are done in accordance with the original plans and contract and built on the Government right of way.

These certificates, which are common in Utah, Idaho, etc., are easily passable from hand to hand and circulated among the copartners in this semipublic corporation while the project is getting down to an orderly and regular procedure.

Senator FLINT. How many of these certficates have been issued?

Director NEWELL. I do not know how many. I think some have been issued in typewriting. We have a record in our local offices.

Senator FLINT. Do you know as a matter of fact that they have been taken by storekeepers and by bankers as currency?

Director NEWELL. I do not know so.

Senator BORAH. They have not in our vicinity.

Senator FLINT. Well, how do you know they will not be?

Senator BORAH. Because the bankers won't go out to hunt up a certain individual to get his money on one of them, as he would have to do with these certificates.

Senator FLINT. Now you are assuming.

Senator BORAH. No; I am speaking from observation and experience.

Director NEWELL. We have studied this matter very carefully, Mr. Chairman, and have felt that where a measure seemed proper, and though not specifically mentioned as permissible in a law, yet was not prohibited, we have gone ahead and adopted it, proceeding along the lines laid down in United States *v.* Macdanie (7 Peters, 380), where it says:

> A practical knowledge of the action of any one of the great Departments of the Government must convince every person that the head of a Department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor defined and which are essential to the proper action of the Government.

I cite this merely to illustrate how these matters are looked upon by the courts as we can ascertain them. It is a condition urged upon us by the people who own the lands. If there is a law to prevent it, we will obey it, but if there is none I think the practice should be continued.

Senator FLINT. Will you ascertain, Mr. Newell, if any of these certificates have been turned over to merchants or bankers?

Director NEWELL. We can not.

Senator FLINT. Will you write to your men and find out?

Director NEWELL. Certainly, Senator.

Senator SUTHERLAND. On reflection I think my judgment was a little too hasty, because if these certificates were transferred to some of the original proprietors, the collateral owners, so to speak, would be obliged to pay in cash, so that the whole amount of the cash would be kept up.

Senator FLINT. I think you are not losing cash, but you are taking a certain number of men in the certain district and paying them the equivalent of $10,000 in cash for their own labor.

Senator SUTHERLAND. But they have to pay cash themselves ultimately.

Secretary GARFIELD. If we employ them from week to week, we pay them in cash, but they do not get the opportunity to receive a return on the certificate till it comes due.

Senator FLINT. But why are you not paying out the same as $10,000 in cash? You have a project costing $500,000. You come along to a lateral costing $10,000. That is $510,000. There is due to the Government this year one-tenth, or $51,000, of that money. Instead of getting $51,000 in cash you get only $41,000. Why have you not paid $10,000 in cash the same as out of the Treasury?

Director NEWELL. But we do not pay that $10,000. We assume no obligation whatever. We permit the men to build the work for themselves in accordance with a definite contract.

Senator FLINT. But assuming that you had this project costing $500,000——

Director NEWELL. When it is completed.

Senator FLINT. Well, suppose you had paid $500,000 and you get a lateral project costing $10,000; you say you have not got the money, but you will let the men do the work, and you issue them certificates for $10,000.

Director NEWELL. No; the water users' association issue them to its members.

Senator FLINT. Well, you certify to them. When the time for payment comes and these certificates are turned in to people who have payments due, how much cash would you get?

Director NEWELL. We would get $50,000 in cash—the exact amount paid out.

Senator FLINT. Where would the certificates go?

Director NEWELL. You do not add them to the total cash cost of the project. There would be $50,000 in cash and $10,000 in certificates showing work done.

Senator FLINT. Well, that would be the same year. You have paid them $10,000 in cash.

Secretary GARFIELD. But, Senator, in one instance, if all the certificates issued were turned in—and I grant they probably would be—for that one year's time you might have a less proportion of cash than you would have on the next year's. The next year everyone would have to pay in cash. The year only they would have credit in such a case.

Senator SUTHERLAND. It might cut down your cash the first year.

Secretary GARFIELD. Yes.

Director NEWELL. On the other hand, they might not only pay their proportional share of the cash, but increase the cash return by the fact that laterals had been built to lands otherwise idle.

Senator SUTHERLAND. Let me suggest, Mr. Newell, why not obviate the question by providing in the certificates that they be credited on the lateral works only and not credited on the original project?

Director NEWELL. That adds a complication for which we do not see the necessity. For example, you want to build your ditch, costing $50. Beyond you is another man. You say, "Let me build this ditch and let me get the credit, while he pays the cash." If you could only have credit for your own ditch it would delay matters. It could be done, but it would make a very complicated piece of bookkeeping. Here is one water user doing a week's work, another a month's work, and so on. Your plan, while it makes it simpler in theory, is more complicated in practice.

Senator FLINT. I do not object to this being done by the Water Users' Association, just as it is being done, nor to the Reclamation Service verifying it. The only objection I have is to the Government, directly or indirectly, through any of its officers, being a party to the issuance of these certificates, which may be used and circulated as cash or currency.

Senator ANKENY. But, Mr. Secretary, this scheme is not unlike your practice of anticipating surveys.

Secretary GARFIELD. I have no doubt about the power, Mr. Chairman, but it is a question of how best to work it out.

Senator ANKENY. Of course, when we build the ditches in the mines, the Government does not build them, but responsible people do, and everyone gets the water. The general principle is the same. I spoke of the surveys—you authorize them frequently in advance.

Senator SUTHERLAND. It does seem to me that you would obviate this entire question if you would provide that these certificates could only be received in payment on the collateral project.

Senator BORAH. Do you mean, Senator, that you would limit them to the particular lateral built by the party?

Senator NIXON. That is my suggestion—that they could not be used to pay for the original project.

Senator SUTHERLAND. It might obviate some of the bookkeeping which the service is endeavoring to avoid.

Director NEWELL. Here is the situation in Milk River Valley, Montana: The people say, "We will build the lateral ditch from Milk River at our own expense if you will build the dam in the river" (which is the difficult piece of the work). Under that agreement we are preparing to build an extensive dam across the river, charging, say, $20 per acre for that portion of the work. The people will build the ditches leading from that dam to the lands, which will cost them, say, $10 per acre. The understanding is that if this works out right the local association shall issue these certificates on that basis. The difficulty will be, of course, to exactly proportion the different cost in order to make it proportionately equal. You will see it is necessary to use these certificates. Here is a case: One man says, "I loaned my scraper and horses to John Jones; why not let him transfer his certificate to me to pay for this loan?" You can readily see the complications that the scheme will settle if the certificates are transferable.

Senator SUTHERLAND. These collateral owners, so to speak, come into the main association?

Secretary GARFIELD. Oh, yes; the certificates are issued by the Water Users' Association, which has control of the entire project, and the different owners in the associations are like stockholders in a corporation, and it is for the benefit of the entire project that these laterals are constructed and their cost is covered into the total cost of the project.

Senator FLINT. What is the necessity of having any officer of the Reclamation Service having anything to do with these certificates?

Secretary GARFIELD. Simply to show that when the ditch is completed it is in accordance with our plans and is properly constructed. That, I understand, is the only reason for having the resident engineer put his approval on it, and only goes to the extent of certifying that there has been so much work done in accordance with the plans of the Service.

Senator FLINT. What is the necessity for the certification on the slip itself?

Secretary GARFIELD. So that when the certificates are finally presented to the Service in settlement of the charge against which the certificate may have been issued, we will know that they are real certificates and not fraudulent ones. I can conceive conditions where we would be flooded with certificates far in excess of the work done were it not for this precaution. When the work is done, the certificate is filled out and the engineer fills out the stub, and when that certificate is presented it can only be canceled when it compares exactly with the stub.

Senator FLINT. But why not have that data without the certificate?

Director NEWELL. Simply for the purpose of eliminating bookkeeping.

Senator FLINT. But without having any officer of the Government certifying to it, keep a copy, but do not issue a certificate.

Director NEWELL. But why not assist the association of water users, if we are doing the thing properly within the law?

Senator BORAH. A banker could not present it to you if he took it up unless he happened to be a party to the initial transaction, and that is the reason it is not circulated as currency with us.

Senator FLINT. But it can be passed around just the same as money.

Director NEWELL. I would like to ask if I may extend my statement in the transcript?

Senator SUTHERLAND. Just one more suggestion. Mr. Newell says that this law has been construed so as to not require the money paid in in equal amounts. The language is "not exceeding ten," in section 4 of the act of June 17, 1902, as follows:

SEC. 4. That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon the lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: *Provided*, That in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon.

If I take a note from one of you gentlemen and the note says to repay in ten installments, you must pay in ten equal installments.

Senator BORAH. It has been construed in the courts that if you wish it so paid you must specify "equal" installments.

Senator ANKENY. Mr. Newell has permission to extend his statement.

Director NEWELL. I merely wish to sum up certain elementary facts which may be overlooked, as follows:

Certificates readily transferable.—The certificates are issued by a water users' association for the purpose of facilitating transfers and to enable the individual members of the association to subdivide among themselves their interest in the works which are ultimately to become a part of the general project.

The certificates are prepared in such form as to circulate readily and to avoid complicated bookkeeping, such as would result where a thousand or more partners in a semipublic corporation are dealing among themselves and evolving order out of the chaos incident to the settlement of a new country.

Certificates not currency.—The certificates are issued in convenient form, not to be used as currency, but so that they may be passed readily from one member of a water users' association to another.

The desire of the water users' association is that these certificates may be issued in such form that they can be readily divided and subdivided among the shareholders or partners who represent the irrigators and settlers who are developing the country.

The necessity of this division or subdivision is because of the fact that in any new country fully one-fourth or one-third of the first settlers change during the first year, some coming and others going.

In the second year there is a little less shifting, but even then a large percentage of the settlers change their holdings or relinquish to newcomers. Under these conditions it is absolutely essential that the evidence of interest in the ditch system or certificates should be of such character that they can be passed from hand to hand with as little delay and inconvenience to the owner as possible.

Certificates not evidence of liability.—A certificate is not an evidence of indebtedness nor a liability of the Government. It represents simply a proportionate interest in a part of a ditch which is to be turned over to the Government without cash outlay and ultimately consolidated into the system. The owners of the ditch receive an equitable reduction of dues to an amount which otherwise would have been demandable from them. In short, the certificate represents an interest in the ditch, but does not represent money which the Secretary of the Interior intends to expend.

Comptroller of the Currency not concerned.—Informal conference with the Comptroller of the Currency indicates that he does not regard these water users' association certificates as coming within his purview, as they are issued by the association as contractor for certain works it is building ultimately for itself and whose cost will not be considered in the refund to be made to the Treasury.

Comptroller of the Treasury not concerned.—The office of the Comptroller of the Treasury has been informally consulted and the opinion expressed in conversation that there is nothing to come before the Comptroller. The issue of certificates by the water users' association does not represent an expenditure to be made by the Government, nor a claim against it, but is simply an evidence of part interest of its members in certain works being built by the water users' association as a contractor and which will be incorporated in the system being completed by the Secretary of the Interior in such a way that they will not add to the currency outlay for the project.

That is to say, if on a $2,000,000 project the Secretary pays in currency $1,800,000 for nine-tenths of the project, the water users contribute $200,000 in labor or supplies, this being the remaining tenth of the project. The equitable distribution of cost to the water users would then be, cash nine-tenths of the entire cost, and labor and supplies one-tenth of the entire cost.

The Treasury will receive back its cash outlay of $1,800,000 in ten or less annual installments. The Treasury officials are not concerned regarding the $200,000 which is not an outlay and is not to be returned to the Treasury, and which does not enter into the currency cost of the project as assumed by the Secretary of the Interior.

Land Office not concerned.—The Land Office does not handle these certificates or take them into consideration, as they are not receivable by the Land Office in payment for dues, but are received and canceled by the engineers of the Reclamation Service in recognition of

exchange of values for a ditch or a portion of a ditch which has been built by the water users' association at its own expense.

Cooperative construction customary.—In the arid and semiarid States, notably Utah and Idaho, it is the established custom that the irrigators or water users join together in building irrigation ditches or laterals, receiving in exchange for their work a certain share of stock or equitable reduction of the dues. The proposed issue of certificates is in accordance with this custom, which has been approved by years of successful operation. The certificates do not represent a cash indebtedness, but an inchoate right which will be recognized when settlement is made for a water right.

Registration by the engineer of the Reclamation Service.—The registration by the engineer of the Reclamation Service of the certificates when originally issued by the water users' association indicates that the work has been properly done in accordance with the plans and specifications of the Reclamation Service, which have been filed with the association, describing the works, subject to the direct supervision of the engineer. It shows that he has checked the records of work done or supplies or materials furnished.

Registration is necessary to show that the above-named conditions have been complied with and that there is no possibility of overissue of the certificates beyond the amount agreed upon or exceeding the value received. It indicates that the work has been properly measured up or the units of results computed.

Cash outlay and cash returns not affected.—The issue of these certificates by the water users' association and subsequent redemption does not increase the cash outlay by the Secretary of the Interior nor diminish the returns to the Treasury for this cash outlay. The certificates do not affect in any way the cash liability assumed by the Secretary of the Interior under the terms of the reclamation act. They simply represent labor performed or materials furnished for a part of a project, without cash outlay or cash returns.

Three parties in interest.—In any consideration of construction, operation, and ownership of works built under the terms of the reclamation act there are to be distinguished three parties in interest:

First. The Government, represented by the Secretary of the Interior. It is the owner of the irrigation works, the title, under the terms of the reclamation act, remaining in the Government until otherwise provided by Congress.

Second. The association. This is an incorporated organization of water users, and, under the terms of section 6 of the reclamation act, will ultimately manage and operate the works. Under the law, it thus acquires what might be called an equitable interest in the works, the legal title being in the Government. The association makes no payment, but by contract with the Secretary of the Interior guarantees the payments. It owns no lands nor water rights, but represents the land and water owners.

Third. The individuals. These are the men who actually pay the charges assessed under the reclamation act and become the owners of the lands and the owners of the water rights which ultimately are inseparably attached to the lands.

Necessity for association.—The necessity for the formation of the water users' association, which stands intermediate between the Gov-

ernment and the individuals, arises from the fact that some organization must ultimately operate and manage the works. The formation of the association at as early a date as possible is requisite, because of the fact that it is necessary to deal with a thousand men, most of them strangers to each other, sometimes speaking different languages, having widely varying experience and training, but who are brought together by community of interest and whose success is dependent upon the early and proper coordination of their interests. There are many complications of lands and water rights to be adjusted in the early stages of the projects, which can best be handled by dealing with representatives of the whole body than with the individuals.

An irrigation system is a highly developed machine or organism, which not only necessitates a large investment in its construction, but requires great skill and forethought in its operation. Like all instrumentalities of value to mankind, it is capable of becoming by neglect destructive to life and property. As in the case of fire, the irrigation dam or canal is a useful servant, but a bad master. It must be given daily or even hourly attention by skilled men. This skill can not be acquired in a day or a year by the association of farmers who must ultimately manage and operate the works. This association or partnership of farmers must be gradually led to work together harmoniously and effectively.

Theory of certificates.—The construction certificates issued by the water users' associations, with the approval of the engineers of the Reclamation Service, are intended as evidence that work has been done or materials or supplies furnished for a given portion of a project. A careful record is kept of this work or materials, as well as of the certificates, and is always available for examination and auditing. The amount represented by the face value of the certificates is not an indebtedness of the United States, and the certificate is not an evidence of ownership of water rights. When the certificate is surrendered and accepted by the properly authorized officer of the Reclamation Service it represents value which is then equitably apportioned as a credit on an installment of the reclamation water right charges.

In this way the Reclamation Service, under authority of the Secretary of the Interior, receives from the holder of the certificate an equivalent indivisible interest in certain irrigation structures. He exchanges this share, whose value is expressed by the certificate, for a definite interest in the whole system which has been or is being built by the Reclamation Service, the ownership of which is held by the United States in trust for the whole body of water users.

It is very important to keep in mind these fundamental facts:

First. The certificate is not an outstanding liability of the Reclamation Service, but represents a value which will be exchanged on an equitable basis.

Second. Exact and explicit records must be kept of the work done and materials delivered leading up to the issue of each certificate, so that the auditing may be simple and thorough.

Third. The certificate, when presented and canceled, represents the surrender to the Secretary of the Interior by the holder of a certain interest in a ditch or structure used as a portion of the irrigation system which the Secretary is completing.

Fourth. When the certificate is canceled the Secretary announces that because he has received certain valuable rights or property needed in the completion of a certain project he reduces equitably the charges on a certain farm unit.

The Land Office has nothing to do with the certificates. Under the theory of their issue the certificates are not received in payment for dues, but are a direct exchange of an interest in property previously acquired which the Secretary desires to obtain in order to complete the irrigation system.

The holder of the certificate does not surrender the certificate in payment of dues. On the contrary, he is relieved of certain charges through an equitable exchange of property.

Section 4 of the reclamation act states that the charges made against any farm unit shall be estimated with a view of returning to the reclamation fund the estimated cost of construction of the works and shall be apportioned equitably. This equitable apportionment can be secured if the holder of the farm unit presents to the Secretary certain rights of property, which is a desirable part of the system. By accepting this right or interest the Secretary is enabled to reduce equitably the charges against a particular parcel of land.

This exchange of values or equitable apportionment is entirely independent of the collection of cash charges. These by law are placed in the hands of the Land Office. The transaction as regards equitable exchange must be completed in such a way that the Land Office is called upon to take cognizance only of the cash payment, and not of the details of the reduction of charge due to this equitable apportionment.

All matters of acquiring rights or property as part of the construction of the complete irrigation system are made by the officers of the Reclamation Service, and are completed in such a manner or at such times as will enable the Land Office to consider the cash payments as a separate transaction.

In order to give the steps which lead up to this procedure the following résumé is given of various methods of construction:

First. *Complete construction, followed by complete cash payment.*—The Government constructs all of the works by contract or by force account, paying cash for them. A charge is made on a cash basis to all water users, the equitable apportionment required by section 4 of the reclamation act being thus a simple matter of cash payments by all water users, as apportioned by the Secretary.

Second. *Part purchase for cash; balance paid in cash.*—In the case that the Government finds an existing canal or ditch system which is in the way of the larger work, or can be incorporated with it, a cash payment is made for this existing canal, and it is incorporated with the remaining part of the work, which is completed by contract or force account. The water users repay the total in cash installments.

Third. *Part cash purchase from water users, remainder cash construction.*—In the case that the portion of the canal already constructed by private ownership is purchased from the water users themselves, the Government may pay to the water users in cash the estimated value of the system purchased. Then, in the course of ten or twelve years, the Government collects back from the water users,

also in cash, the cost of the whole work, including the portion purchased from them.

In this case the water users have had at all times the continued use of the existing system. In effect, the Government loans to the water users, without interest, the total value of the system purchased, and they enjoy at the same time the use of the canal and the money realized by its sale. A recognition of this condition led to the consideration of a credit system instead of cash purchase in order to obviate criticism that the money of the Government was tied up in what amounts to a loan to the water users.

Fourth. *Credit purchase in part, balance cash construction.*—Where the Government found an irrigation system partly constructed and owned by a portion of the water users, instead of paying these water users cash for the system, the next step in evolution has been to credit these water users with the cost of their system and assess against this particular group of men a less payment than in the case of the persons who are not part owners in the existing system. Here all the water users pay a given amount per acre for water rights, while the owners of the old water right, who obtain from the Government the benefits of an improved system and a complete water right, receive an equitable apportionment on the basis of value surrendered, which, according to circumstances, may range from $10 to $40 or $50 per acre.

On a strict cash basis it would have been necessary to pay these men each $10 to $40 or $50 per acre, and then collect it from them in ten years or more, allowing them in the meantime to have the use of the money, and the Government being at the same time deprived of its use in the construction of larger works. This plan has been adopted in several cases, as, for instance, on the Payette-Boise and the Sunnyside projects.

Fifth. *Cash construction, in part; balance, credit construction.*—The next step is in the case of a necessary lateral or extension of a system which the Government is building on a cash basis. There a group of men get together and build at their own expense a lateral and then sell it to the Government, the case being analogous in all respects to that in which the same men had already built a lateral. In either case these men could properly be allowed credit for the work done or to be done.

In such cases the Secretary makes an equitable distribution of the cost, and the men who build the new extension may pay $30 an acre, while the others pay at the rate of $50 an acre. The adjustment rests in the discretion of the Secretary, who apportions the cost equitably in accordance with the conditions.

Sixth. *Part cash construction; part certificate construction by owners.*—Where conditions are so complicated that it is impracticable to organize a group of men to build a lateral and to transfer this to the Government as one item for merging it in the system on a credit basis, then the next step is one dependent for success on good bookkeeping. How can the credit be given to individuals for their proportional part of a piece of work? This is a simple matter when we have a group of men owning as an entirety a certain ditch system which is to be purchased and credited to the entire project, but this condition is the reverse of this in that we must deal with individuals having inseparable interests in the whole.

The logical result is that, instead of crediting the entire system as one charge, it is necessary to subdivide this system on the books and represent each subdivision by a certificate as to its value.

To accomplish this the individuals who desire to obtain shares of credit organize into an association; they build a ditch in its entirety, and as an association receive a credit for the ditch. This is a simple and obvious matter where the association does the work upon the particular lateral in which each is a landowner. This is a simple case, and the Secretary makes the equitable apportionment to this group of water users who will each pay a less amount in cash, as they have already provided or are about to provide the portion of the distributing system which will carry water to their own land.

Seventh. *Part cash, or none, balance certificates, by men not direct owners.*—The final condition is where one or more men do not receive water from a particular lateral on which he works, but desires to do any work anywhere and receive corresponding credit for land not yet located. He receives a certificate which is an acknowledgment of the fact that he has contributed to the cost of a particular canal, and that his cash balance due to the Government should be correspondingly reduced.

Under the equitable distribution allowed by the Secretary, he may obtain his water right by the payment of a small amount of cash in addition to the credit which he has earned. This amount of cash may be very small or may be nothing. The Secretary may say to him, "You have earned a complete water right by giving to the entire system your work, and the results, while not separable from other parts, entitle you to a water right without any cash payment."

This is analogous to the recognition of an existing water right, such as that where a small ditch is incorporated into the system without cost to the Government. In such cases the Secretary may recognize the existing water right as complete. In the analogous case of the holder of certificates the Secretary recognizes an exchange of value such that the charge for his water right is completely canceled.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 508.

VESTRY OF THE PLAINS EPISCOPAL CHURCH, THE PLAINS, VA.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF VESTRY OF THE PLAINS EPISCOPAL CHURCH, OF THE PLAINS, VA., AGAINST THE UNITED STATES.

MAY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 21, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by the resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

Court of Claims. Congressional case No. 11797. Vestry of The Plains Episcopal Church, of The Plains, Va., *v.* The United States.]

STATEMENT OF CASE.

The following bill was referred to the court February 28, 1905, by resolution of the United States Senate under act of Congress approved March 3, 1887, known as the Tucker Act:

"[S. 7067, Fifty-eighth Congress, third session.]

"A BILL For the relief of the vestry of the Episcopal Church of The Plains, Fauquier County Virginia.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the vestry of the Episcopal Church of The Plains, Fauquier County, Virginia, for the use and occupation and partial destruction of their church property during the war between the States, the sum of one thousand dollars."

The vestry of the Episcopal Church of The Plains, Fauquier County, Va., appeared and filed their petition in this court July 14, 1906, in which they make the following allegations:

That during the late war for the suppression of the rebellion, and in the fall of 1863, the military forces of the United States, under command of General Geary, took possession of the church building of The Plains Episcopal Church, of The Plains, Va.,

and used and occupied the same for military purposes. That by reason of such occupancy repairs were necessary, and the cost to restore the building to the condition in which it was at the time the said military forces took possession was the sum of $1,000, for which no payment has been made.

The case was brought to a hearing on loyalty and merits on the 4th day of May, 1908.

G. W. Z. Black, esq., appeared for the claimants, and the Attorney-General, by W. H. Lamar, esq., his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence adduced by the claimants, none being adduced by the defendants, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. The Plains Episcopal Church, of The Plains, Va., as a church, was loyal to the Government of the United States throughout the late civil war.

II. During said war the military forces of the United States, by proper authority, took possession of the church building described in the petition, and used and occupied the same as general quarters for the troops for a short period of time, and damaged the same. The reasonable rental value, together with damages in excess of ordinary wear and tear, was then and there the sum of five hundred and fifty dollars ($550), no part of which appears to have been paid.

III. The claim herein was never presented to any department or officer of the Government prior to its presentation to Congress and reference to this court by resolution of the United States Senate, as hereinbefore set forth in the statement of the case, and no reason is shown why the same was not earlier presented.

BY THE COURT.

Filed May 18, 1908.

A true copy.
Test this 21st day of May, 1908.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 509.

GEORGE W. BOUSHELL AND OTHERS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF GEORGE W. BOUSHELL, AND THIRTY-TWO OTHER CLAIMANTS, AGAINST THE UNITED STATES.

MAY 22, 1908.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 21, 1908.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid causes, which cases were referred to this court by the resolution of the United States Senate, under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims of the United States. Congressional case No. 13106. Subnos. 28, 29, 31, 47, 59, 62, 63, 73, 82, 88, 97, 99, 106, 113, 122, 137, 138, 143, 159, 167, 173, 189, 199, 211, 219, 223, 225, 227, 247, 249, 252, 258, and 261, (Norfolk Navy-Yard.) George W. Boushell; John T. Brown; William T. Boole; James A. Black; Martin J. Casey, executor, etc., of Steven Casey, deceased; James O. Corprew; Mary F. Connor, widow of Robert Connor, deceased; Nelson Carney; John A. McDonald; Hugh Smith; Richard S. Wilson; Thomas P. Cooke; Richard M. Diggs; Frank E. Eaton; John T. Gallam, administrator of Michael Moran, deceased; Thomas J. Howe; Ignatius Howe; John W. Howe; Charles A. Jakeman; William F. Luke; James W. McDonough; Louis McCloud; Thomas O'Rourke; Mary J. Pyle, widow of Mifflin J. Pyle, deceased; Thomas Riley; Henry W. Robie; Mary E. Rollins, widow of James W. Rollins, deceased; Miles Riddick; Robert T. Trafton; Watson Vellines, under name of Watson Furlines; Scott White; Edward Whitehurst; Miles C. Wood *v.* The United States.]

STATEMENT OF CASE.

This is a claim for the payment to the above-named claimants for services rendered at the Norfolk Navy-Yard, Norfolk, Va., between March 21, 1878, and September 22, 1882, for extra labor above the legal day of eight hours.

On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

[S. 8261, Fifty-ninth Congress, second session.]

"A BILL For the relief of Christopher Alexander and others.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Christopher Alexander and to the others who have joined with him in a

petition to this Congress, dated January twenty-ninth, nineteen hundred and seven, the amounts that may be found due to each of them, respectively, for extra labor, above the legal day of eight hours, while employed by the United States as workmen, laborers, or mechanics at the various navy-yards of the United States, performed by them by reason of and under the provisions of circular numbered eight, issued by the Secretary of the Navy on March twenty-first, eighteen hundred and seventy-eight."

Thereafter the claimants named above and each of them offered and filed their respective petitions herein in which they and each of them aver substantially as follows:

That between March 21, 1878, and the 21st day of September, 1882, they and each of them were employed by the Government of the United States at the navy-yard, at Norfolk, Va.; that on March 21, 1878, the Secretary of the Navy issued the order referred to in claimants' petitions known as Circular No. 8, and set forth in Finding I herein.

That during the six months in each year from the date of said order to the 21st day of September, 1882, they worked during all or a portion of the time they were so employed in excess of eight hours per day and that they and each of them were paid for only eight hours' work per day for the time they were so employed during said period, and that they and each of them are entitled to the amounts set forth in their respective petitions, being the pay for all time worked during said period in excess of eight hours per day.

The case was brought to a hearing on the evidence and merits on the 4th day of May, 1908.

Thomas Dawson appeared for the claimants, and the Attorney-General, by Percy H. Cox, his assistant, and under his direction, appeared for the defense and protection of the interests of the United States.

The court, upon the evidence, and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I. Between the 21st day of March, 1878, and the 22d day of September, 1882, the claimants herein or their decedents and each of them were in the employ of the United States in the navy-yard at Norfolk, Va., during which time the following order was in force:

NAVY DEPARTMENT,
Washington, D. C., March 21, 1878.

Circular No. 8.]

The following is hereby substituted, to take effect from this date, for the circular of October 25, 1877, in relation to the working hours at the several navy-yards and shore stations:

The working hours will be—

From March 21 to September 21, from 7 a. m. to 6 p. m.; from September 22 to March 20, from 7.40 a. m. to 4.30 p. m., with the usual intermission of one hour for dinner.

The Department will contract for the labor of mechanics, foremen, leading men, and laborers on the basis of eight hours a day. All workmen electing to labor ten hours a day will receive a proportionate increase of their wages.

The commandants will notify the men employed, or to be employed, of these conditions, and they are at liberty to continue or accept employment under them or not.

R. W. THOMPSON,
Secretary of the Navy.

Said claimant and each of them or their decedents, while in the employ of the United States as aforesaid, worked on the average the number of hours set opposite their respective names in excess of eight hours a day and at the wages below stated, to wit:

Name of claimant.	Number of hours.	Rate per day.
George Boushell	323	$3.00
John T. Brown	85	2.25
William T. Boole	326	3.00
James A. Black	348	2.25
John T. Brown	325	1.20
Martin J. Casey, executor, etc., of Steven Casey, deceased	129	1.75
James O. Corprew	314	2.25
Mary F. Connor, widow of Robert Connor, deceased	912	2.00
Nelson Carney	177	1.70
James A. McDonald	464	3.00

Name of claimant.	Number of hours.	Rate. per day.
Hugh Smith	106	$0.64
	423	.90
	223	1.50
	243	2.26
Thomas P. Cooke	192	2.50
	12	2.76
Richard M. Diggs	14	2.50
Frank E. Eaton	134	.60
	167	.90
John T. Gallam, administrator of Michael Moran, deceased	433	1.76
Thomas J. Howe	734	5.25
Ignatius Howe	127	3.24
John W. Howe	363	3.00
	465	3.00
	157	3.26
Charles A. Jakeman	131	.94
	422	.90
	8	1.20
	195	1.50
William F. Luke	34	3.00
James W. McDonough	766	5.00
	126	3.24
Richard S. Wilson	480	.60
	30	.90
	131	1.20
Louis McCloud	486	3.00
Thomas O'Rourke	126	2.26
	113	2.50
Mary J. Pyle, widow of Mifflin J. Pyle, deceased	610	3.50
Thomas Riley	36	2.26
	182	2.50
Henry W. Roble	715	3.50
	140	3.24
Mary E. Rollins, widow of James W. Rollins, deceased	324	3.00
Miles Riddick	546	1.76
Robert T. Trafton	57	2.26
	138	2.50
	213	2.76
Watson Vellines, under name of Watson Furlines	561	1.76
Scott White	404	1.76
Edward Whitehurst	317	3.00
Miles C. Wood	123	3.00

III. If it is considered that eight hours constituted a day's work during the period from March 21, 1878, to September 22, 1882, under Circular No. 8, issued by the Secretary of the Navy March 21, 1878, that the claimants, or their decedents, have been underpaid the sums set opposite their respective names, as follows:

George Boushell, one hundred and twenty-one dollars and thirteen cents	$121.13
John T. Brown, seventy-two dollars and seventy-six cents	72.76
William T. Boole, one hundred and twenty-two dollars and twenty-five cents	122.25
James A. Black, ninety-eight dollars and thirty-one cents	98.31
Martin J. Casey, executor, etc., of Steven Casey, deceased, twenty-eight dollars and thirty-eight cents	28.38
James O. Corprew, eighty-eight dollars and seventy cents	88.70
Mary F. Connor, widow of Robert Connor, deceased, two hundred and twenty-eight dollars	228.00
Nelson Carney, thirty-eight dollars and ninety-four cents	38.94
John A. McDonald, one hundred and seventy-four dollars	174.00
Hugh Smith, ninety-seven dollars and eighty-seven cents	97.87
Richard S. Wilson, fifty-nine dollars and two cents	59.02
Thomas P. Cooke, one hundred and thirty-two dollars and seventy-nine cents	132.79
Richard M. Diggs, four dollars and thirty-seven cents	4.37
Frank E. Eaton, twenty-eight dollars and eighty-four cents	28.84
John T. Gallam, administrator of Michael Moran, deceased, ninety-five dollars and twenty-six cents	95.26
Thomas J. Howe, five hundred and thirty-three dollars and twelve cents	533.12
Ignatius Howe, one hundred and thirty-six dollars and twelve cents	136.12
John W. Howe, two hundred and thirty-eight dollars and thirty-five cents	238.35
Charles A. Jakeman, one hundred dollars and sixty-two cents	100.62
William F. Luke, twelve dollars and seventy-five cents	12.75
James W. McDonough, five hundred and twenty-nine dollars and seventy-eight cents	529.78
Louis McCloud, one hundred and eighty-two dollars and twenty-five cents	182.25

Thomas O'Rourke, seventy dollars and ninety cents	$70.90
Mary J. Pyle, widow of Mifflin J. Pyle, deceased, two hundred and sixty-six dollars and eighty-seven cents	266.87
Thomas Riley, sixty-seven dollars and four cents	67.04
Henry W. Robie, three hundred and sixty-nine dollars and fifty-one cents	369.51
Mary E. Rollins, widow of James W. Rollins, deceased, one hundred and twenty-one dollars and fifty cents	121.50
Miles Riddick, one hundred and twenty dollars and twelve cents	120.12
Robert T. Trafton, one hundred and thirty-two dollars and seventy cents	132.70
Watson Vellines, one hundred and twenty-three dollars and forty-two cents	123.42
Scott White, eighty-eight dollars and eighty-eight cents	88.88
Edward Whitehurst, one hundred and eighteen dollars and eighty-seven cents	118.87
Miles C. Wood, forty-six dollars and twelve cents	46.12

IV. Several of the claimants hereinbefore mentioned filed their claims in this court in September, 1888. In 1906 they were dismissed for want of prosecution, and no reason is given why said claimants did not prosecute said claims to a final judgment in this court.

Except as above stated, the claims were never presented to any department or officer of the Government prior to the presentation thereof to Congress and reference to this court, as hereinbefore set forth in the statement of the case, nor is any competent evidence adduced to show why said claimants did not earlier prosecute their said claims.

By the Court.

Filed May 21, 1908.

A true copy.
Test this 21st day of May, A. D. 1908.
[SEAL.]

John Randolph,
Assistant Clerk Court of Claims.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 510.

REPORT OF COMMITTEE OF ANACOSTIA CITIZENS' ASSOCIATION ON ANACOSTIA FLATS.

Mr. GALLINGER presented the following

REPORT OF THE COMMITTEE ON THE ANACOSTIA FLATS.

MAY 22, 1908.—Ordered to be printed.

The necessity for the improvement of the Anacostia River has been so fully recognized by Congress in several acts and resolutions calling for surveys or making appropriations for temporary relief to navigation that it hardly calls for arguments to emphasize the importance of this work, but were a committee appointed to consider and report upon the most vital improvement in the District of Columbia we have no hesitancy in saying that they would recommend the immediate reclamation and improvement of the Anacostia Flats.

Your committee has carefully considered the various efforts that have been made looking to the reclamation and improvement of the Anacostia Flats, and we are of the opinion that the time has come when a demand should be made of Congress, as well as the honorable Board of Commissioners of the District of Columbia, for a sufficient appropriation to immediately begin this important work.

From time to time memorials to Congress have been made, urging upon them the necessity of appropriations for this work; yet up to this time the efforts that have been put forth have resulted in but two steps—first, a partial survey of the Anacostia River, and, second, an opinion as to the title of the lands, both over and under the water in the river. These two steps were, however, very necessary to take, and they will serve as a foundation for further work. The survey to which we refer is that made by Lieut. Col. Chas. J. Allen, Corps of Engineers, U. S. Army, and is printed in House of Representatives Document No. 194, Fifty-ninth Congress, first session, which, for reference, should be taken together with the recommendations of Lieutenant-Colonel Allen as made to the Secretary of War under date of December 1, 1898, and which were transmitted to Congress and printed in House of Representatives Document No. 87, Fifty-fifth Congress, third session. The opinion is that of the Attorney-General under date of September 6, 1905, and is also printed in House of Representatives Document No. 194, Fifty-ninth Congress, first session, and from it we would quote as follows:

The title of the United States to the premises under consideration is derived from the same source and is of the same nature as its title to what is known as the Potomac Flats, which has been judicially established. It rests upon the cession made by

the act of the State of Maryland of December 23, 1788, entitled "An act to cede to Congress a district 10 miles square in this State," which was accepted by the act of Congress approved July 16, 1790, and the act of March 3, 1791, amendatory thereof, and was subsequently ratified by an act of the State of Maryland passed December 19, 1791. By this legislation the United States became invested with the title to the shores and beds of the navigable waters within the limits of the territory so ceded, embracing the Eastern Branch or Anacostia River, as it was then navigable, as well as the Potomac River, which title was held by the United States (as it previously was by the State) in trust for public purposes.

The lands included within the Anacostia Flats, as shown by the said survey (referring to the survey above mentioned), appear to be either submerged or subject to tidal overflow by the waters of the Eastern Branch, and are a part of the bed of the latter. The accompanying papers furnish no information as to the existence of any private claims affecting these lands. (This refers to the titles, etc., described in the same document.) It is probable, however, that claims to riparian rights and wharfing privileges do exist on the part of owners of property fronting on the Eastern Branch; and the Baltimore and Potomac Railroad Company, whose tracks cross the flats in question, may have claims in connection with its right of way upon the same. Subject to the existence and validity of such claims, if any, I think that the ownership of all the land embraced within what is known as the Anacostia Flats, as indicated by the aforesaid survey, is vested in the United States for public purposes.

Your committee recommends that Congress be asked, both through the Board of Commissioners and direct, to make a sufficient appropriation to carry out Lieutenant-Colonel Allen's recommendations, in which it is recommended that the channel be dredged to the depth of 20 feet at low tide with a width of 400 feet to the Anacostia bridge, and a depth of 16 feet with a width of 300 to 200 feet to the Benning bridge, the depositing of the dredged material on the flats and transporting material to raise the same to a height of 14 feet above low tide, including the erection of a sea wall, at an estimated cost of $7,000,000, and this estimate, although made in 1898, appears about correct as of this date, but it is based on large and continuous appropriations.

On February 26, 1906, Congress adopted a joint resolution asking the Board of Commissioners to submit to them a report upon the improvement of the flats, with recommendations and estimates of the cost, and to this resolution the Board of Commissioners replied asking for an appropriation of $10,000 to employ counsel to investigate and determine as far as possible as to the ownership of the land and riparian rights along the Anacostia River before any attempt was made to improve the flats. Your committee believes that as the Attorney-General has rendered an opinion as to the ownership of the lands in question an appropriation should be asked of the coming Congress to begin this important work, and that out of the first appropriation the sum of $10,000, or so much thereof as may be necessary, shall be available for the employment of special counsel to carry out the suggestions of the Board of Commissioners, *provided such course be absolutely necessary.* As it will take a considerable time to improve the flats, why cannot we have the benefit of this time, and the titles, if they must be examined, looked into while the work is going on and thus save several years and much sickness. *If the lands belong to the United States they ought to be filled, and if they don't belong to the United States they are a public nuisance, and the United States should fill them and charge the proportionate costs to the abutting property owners.*

No one can doubt the necessity for immediately starting this important work, from a commercial as as well as a sanitary demand. The trade and commerce of the District of Columbia is growing, and

our wharfing facilities are inadequate and taxed beyond their capacity. This improvement will provide valuable and abundant wharfage for years to come, and the revenue derived therefrom will undoubtedly be a very remunerative income on the investment, to say nothing of approximately 14,000 acres, or over 60,000,000 square feet of land that would be acquired in the reclamation of the flats. If the lands were sold at 10 cents a foot, which is an extremely low valuation, the return to the United States would at least pay for the cost of the improvement, and we would then have eliminated the malignant unsanitary conditions.

The most imperative demand for the improvement of these flats is based upon their insanitary effect on the entire city, and particularly on persons living and working in their immediate vicinity, and as to these insanitary conditions there is no question. Quoting from the 1897 report of the Surgeon-General of the Navy, in speaking of the condition of the Washington Navy-Yard, he says:

It is undoubtedly true that the health of the yard cannot be secured unless the Anacostia Flats be reclaimed.

At St. Elizabeth Hospital, just opposite the navy-yard, the morbidity from malaria has very largely increased in the last few years.

In the report for the year 1899, we quote:

Attention is again called to the condition of the mud flats off the yard, and this condition will remain a menace to the health of the yard as long as measures are not instituted for diverting the sewage from the Eastern Branch entirely and delivering it into the Potomac River. The reclamation of the flats and walling in both sides of the channel, as has been proposed, would tend to improve matters. * * *

In the report for the year 1900, we quote:

The influence of the flats of the Anacostia River occupies the most important place in the consideration of the health of this yard, which for some years now has been a center of malarial infection in the Naval Service and the Marine Corps. Men placed on duty at this yard are afterwards sent to other shore stations or to ships, where they from time to time have returns of the fever, resulting from infection at this place. Undoubtedly the interests of the service, and of the city, demand the expenditure of money, however great it may be, necessary to remove such an extensive cause of sickness and distress.

In the report for the year 1901, we quote:

The flats of the Anacostia River continue to exert a strong influence on the health of this yard, as during the year 1900, from an average complement of 260 persons, there were 59 admitted to the sick list with malarial trouble. This does not include a reappearance of the disease, but simply represents those infected during the year. * * * This factor is, however, still sufficiently great to occupy the most prominent place in considering the health of the yard, and the influence is sufficiently strong to attract attention to this yard as a center of infection for the naval service, as men who have been under instruction here, when transferred to ships and other stations, are for a long time liable to reappearances of the disease.

From a recent report of the Board of Visitors of the Government Hospital for the Insane, we quote:

This board would also most urgently request that the attention of Congress be called to the deplorable condition of the Anacostia Flats, from the junction of that stream with the Potomac River to the railroad bridge of the Pennsylvania Railroad Company. Bordering the hospital grounds on the west they are a constant menace to the health of the institution, and a fertile soil for the development of the specific germs of malaria. These flats are perhaps a half mile in width, the water covering them is very shallow, leaving them almost exposed at low tide, and during the summer season they become covered with a rank growth of weeds and water moss, which decays as autumn comes on. The decomposing organic matter, the sluggish water, and the soft mud bottom make a combination of conditions especially favorable to

the production and dissemination of the malarial poison, and the hospital inmates have been in large degree sufferers thereby. * * * We believe it to be within the power of Congress to remedy this condition in large part by deepening and widening the channel of the Anacostia River and by filling up the flats well above high tide. The reclaimed land would also be of great value for truck gardening, and would go far toward recompensing the Government for the outlay. In the interest of the health of this hospital and of the entire eastern portion of the District, we hope Congress can be prevailed upon to make the necessary appropriations to begin the improvement.

It is worthy of note that since a portion of the flats bordering on the grounds of the Government Hospital for the Insane have been partly filled, that already the physician in charge of this hospital has made mention of the fact that these conditions have been largely benefited, and that malaria in his institution has been on the decrease. We could occupy considerable space by quoting from annual reports of recent date of the Surgeon-General of the Navy, and all institutions bordering on the Anacostia River, but we are desirous of showing that these conditions have prevailed for years and we should not tolerate further delay.

The records of the board of education will show that the attendance records for the scholars residing in the eastern section of the District of Columbia will bear witness to the fact that from 75 to 80 per cent of the absentees on account of sickness are due to malarial causes, and no doubt these same conditions will prevail in the southwestern and northwestern sections of the District of Columbia.

There are many who have condemned these filthy disease-breeding flats. In the summer they are covered with a dense growth of eel grass and wild rice, which is disseminated over the flats at high tide, and as the tide falls it is halted by the new sewer built on the flats and extending from the south side of the channel to the shore, and remains lodged in the aquatic grasses, where it ferments in the intense heat of the summer and autumn, *and the results are the dissemination of malarial poison, and the atmosphere of which is a stench in the nostrils of our citizens.*

Recommendations as to these flats have been made by the honorable Board of Commissioners, the Medical Association of the District of Columbia, the Surgeon-General of the Navy, the physicians in charge of the Government Hospital for the Insane, the United States jail, District workhouse, and Washington hospital, the board of trade, the Business Men's Association, and the various citizens' associations, but the results can not be seen.

Your committee can not close this report without quoting from the annual report of 1896, of the late Doctor Godding, physician in charge of the Government Hospital for the Insane, who labored long and zealously for what we are now trying to accomplish, in which he speaks of the number of veterans of the civil war who take refuge in the National Home for Disabled Volunteer Soldiers, and of whom a considerable per cent reach their final camping ground at the Government Hospital for the Insane:

It is to this steady increase of the numbers of men in advanced life, coupled with the insalubrity of the adjoining flats of the Eastern Branch of the Potomac, that the higher figures of mortality are mainly due. There has been a notable absence of any further work on these bottoms during the past year and one might therefore hope for some subsidence in the growth of ague germs. But the mischief was done by the previous abortive interference with nature in throwing up those mud bars, which do not fill the flats, but stop the currents; bars that with the ebb of each tide

rise out of the stagnant pools, green with a slimy growth and reeking with malaria, creating a land of noisome odors, out of which come emanations fit only for the valley of the shadow of death. The river and harbor bill of the last session of Congress carries $100,000 for the improvement of the Potomac River. It is perhaps too much to hope that any portion of this will be diverted to the Eastern Branch for the healing of Anacostia and St. Elizabeth, for the benefit of dwellers in South Washington and vicinity. In any event the deferred completion of the work undertaken on those flats by the United States Government means increased sickness and death in the early autumn among those who have a home here; a home not of their own seeking, nor are they held for crime like those whom the same miasm overtakes at the United States Jail on the opposite shore, but men who fought for their country, missing a grave on the battlefield, only to find it here. The true soldier patiently endures, yet who could blame him if. breaking his silence, he should exclaim, "How long, O, Lord, how long?"

This quotation, in which Doctor Godding speaks of the mud bars, will compare very favorable with the conditions that exist to-day on account of the new sewer which is built on the flats, and which has abolished the only outflow that existed for the carrying off of part of the filth and sewage.

Respectfully submitted.

EUGENE E. THOMPSON, *Chairman.*
H. M. JOHNSON,
R. A. PYLES,
A. GUDE,
G. O. WALSON,
J. W. TOLSON,
GEO. C. HAVENNER,
Committee on Anacostia Flats.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 511.

MORE TIME REQUIRED TO PREPARE DETAILED STATEMENT OF REVENUES COLLECTED, FUNDS RECEIVED, AND DISBURSEMENTS MADE FOR CHOCTAW, CHICKASAW, CHEROKEE, CREEK, AND SEMINOLE TRIBES SINCE JANUARY 28, 1898.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

STATING THAT,

OWING TO THE AMOUNT OF WORK INVOLVED, IT WILL BE IMPOSSIBLE TO COMPLY WITH SENATE RESOLUTION 185 AT THIS SESSION OF CONGRESS.

MAY 22, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., May 21, 1908.

SIR: I have the honor to acknowledge the receipt of the following resolution:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to cause to be prepared and to transmit to the Senate a detailed statement showing all revenues of every kind and character collected, and all funds from all sources received and credited to each of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes since January twenty-eighth, eighteen hundred and ninety-eight, and the disbursements made from the funds of said tribes severally, with the authority therefor, since said date.

By direction of the President I beg to advise you that, owing to the great amount of work involved, it will be impossible to have this statement prepared for use during the present session of Congress.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE UNITED STATES SENATE.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 513.

REPORT ON TIDE-LAND CLAIMS OF PUYALLUP INDIANS IN WASHINGTON STATE.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF APRIL 28, 1908, CERTAIN INFORMATION CONCERNING THE TIDE-LAND CLAIMS OF THE PUYALLUP TRIBE OF INDIANS IN THE STATE OF WASHINGTON.

MAY 23, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1908.

SIR: By direction of the President, I have the honor to report upon the subject of inquiry contained in Senate resolution dated April 28, 1908, concerning the tide-land claims of the Puyallup tribe of Indians in the State of Washington.

In 1854 a treaty was made between the United States and these Indians which provided for setting apart a reservation.

In 1856 Governor Isaac Stevens held a conference with the Indians and agreed upon the boundaries of the reservation. He caused a survey map to be made which shows as one boundary of the reservation a straight line across the head of Commencement Bay. The recommendation of Governor Stevens, as shown on this map, was approved by this Department and by the President of the United States in 1857.

In 1864 the surveyor-general for the Territory of Washington, in extending the Government surveys from the reservation, showed the northwestern boundary along the bay by a line which seems to be a meander of the bay. Between this line and the straight line on Governor Stevens's map is a tract of land of nearly 300 acres which is now in dispute between the Indians and the grantees of the State of Washington.

On September 6, 1873, by Executive order, the President extended the Puyallup Indian Reservation by including in it "all that portion

of section 34, T. 1 N., R. 3 E., not already included within the reservation." The Indians had, prior to this order, claimed the land in question. This addition lies on the shore of the bay, and the Indians claim that the grant is to low water, including tide lands, which, nevertheless, have been sold by the State of Washington.

This Department and the Indian Office at various times considered the question whether the Puyallup Indians owned the tide land in front of the reservation along Commencement Bay. There was a diversity of opinion on the questions of fact and law involved in that controversy, and it was decided by the Department not to use the Indians' funds to institute suits for the recovery of the land.

On July 19, 1906, however, the living descendants of the original members of the Puyallup tribe appointed seven trustees with authority to enter into contracts for the care and recovery of their tribal property. These trustees on April 29, 1907, in pursuance of the authority granted by the tribe, entered into a formal contract with one Charles Bedford to institute proceedings to recover the tide lands mentioned above for a compensation of 50 per cent of the land or the proceeds recovered.

On May 6, 1907, Mr. B. S. Grosscup, duly appointed attorney in fact for Charles Bedford, sent to me a letter inclosing a copy of the contract with Bedford, requesting that it be approved as a contract entered into under section 2103, Revised Statutes. The proposal of Mr. Grosscup was considered carefully both in the Indian Office and this Department and rejected on the ground that the compensation was excessive.

The Commissioner of Indian Affairs reported that he believed that the Indians should be allowed to try in the courts the question of their rights to the land claimed. I approved his recommendation to consider the proposed contract.

Therefore when, after considerable correspondence and verbal conference with Mr. Grosscup, he agreed to a very considerable modification of the provisions for compensation in his contract—reducing it from 50 per cent to 25 per cent, with a maximum of $30,000—I approved the contract with such modifications.

Since that time action to quiet title has been instituted. This and any other action that may be necessary will be pushed to final conclusion as rapidly as possible, to the end that there may be no unnecessary hardship caused by questioning the title to any of that land.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE UNITED STATES.

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60TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 514.

STATEMENT OF AMOUNTS IN TREASURY TO CREDIT OF CHOCTAW, CHICKASAW, CHEROKEE, CREEK, AND SEMINOLE TRIBES ON JUNE 28, 1898, ADDITIONS AND DISBURSEMENTS, AND BALANCES MAY 20, 1908.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

IN RESPONSE TO A SENATE RESOLUTION OF MAY 18, 1908, A STATEMENT SHOWING THE AMOUNTS IN THE TREASURY OF THE UNITED STATES TO THE CREDIT OF THE CHOCTAW, CHICKASAW, CHEROKEE, CREEK, AND SEMINOLE TRIBES OF INDIANS ON JUNE 28, 1898, ETC.

MAY 23, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, May 21, 1908.

SIR: In reply to the resolution of the Senate of the 18th instant—

That the Secretary of the Treasury be, and he is hereby, directed to transmit to the Senate a statement showing the amounts in the Treasury of the United States to the credit of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes of Indians on June twenty-eighth, eighteen hundred and ninety-eight, and what amounts, if any, have been added to and disbursed from the said funds severally since said date—

I have the honor to transmit the statement called for.

The trust fund, "Indian moneys, proceeds of labor," contains moneys deposited in the Treasury belonging to various Indian tribes, the details of which are not of record in this Department, but may be obtained from the Commissioner of Indian Affairs, Department of the Interior.

Respectfully,

GEO. B. CORTELYOU,
Secretary.

The PRESIDENT OF THE SENATE.

Statement of amounts in the Treasury to the credit of various Indian tribes on June, 28, 1898, additions thereto and disbursements therefrom, and balances in Treasury May 20, 1908.

[Furnished in reply to Senate resolution of May 18, 1908.]

	Balance in Treasury June 28, 1898.	Added since.	Disbursed.	Balance in Treasury May 20, 1908.
Choctaws:				
Fulfilling treaties with		$300,328.90	$280,816.01	$19,512.89
Choctaw general fund	$498,514.00	9.00	498,523.00	
Interest		144,012.01	144,012.01	
Choctaw orphan fund	37,014.29	2,696.40		39,710.69
Interest		19,529.80	15,558.72	3,971.08
Choctaw school fund	49,472.70			49,472.70
Interest		24,736.40	22,150.65	2,585.75
Choctaw 3 per cent fund		390,257.92		390,257.92
Interest		5,853.87	5,853.87	
Chickasaws:				
Fulfilling treaties with		12,000.00	12,000.00	
Chickasaw national fund	1,206,695.66	60,000.00	895,690.15	371,006.51
Interest		849,315.11	848,349.98	965.13
Chickasaw incomp. fund, interest		245,503.51	245,090.21	413.30
Cherokees:				
Cherokee national fund	1,428,543.21	11.38	771,616.85	656,937.74
Interest	8,820.04	521,501.02	518,541.58	6,779.48
Cherokee orphan fund	374,679.31	2,656.72	33,187.76	344,148.27
Interest	666.70	186,802.73	144,666.69	42,802.74
Cherokee outlet fund	28,441.12	1,665,164.85	1,664,818.98	28,786.99
Interest		66,400.00	66,400.00	
Cherokee school fund	850,397.92	20,668.28	368,689.35	502,376.85
Interest	1,556.26	351,540.59	352,347.64	749.21
Cherokee asylum fund	64,147.17	769.41	13,582.11	51,334.47
Interest		29,105.78	29,089.48	16.30
Payment to North Carolina Cherokees	24,193.87	12,317.23	13,319.70	23,191.40
Cherokee Nation, judgment Court of Claims		4,972,992.04	924,680.90	4,048,311.14
Creeks:				
Fulfilling treaties with	2,475.00	224,313.60	226,237.15	551.45
Creek general fund	1,546,977.38	999,368.00	73,414.43	2,472,930.95
Interest		1,016,576.66	951,959.15	64,617.51
Seminoles:				
Fulfilling treaties with		471,000.00	471,000.00	
Seminole general fund	1,500,000.00	1,128.88	500,000.00	1,001,128.88
Interest		700,000.00	640,542.00	59,458.00
Seminole school fund		500,000.00		500,000.00
Interest		50,000.00	35,057.08	14,942.92
Total	7,617,594.63	13,846,560.09	10,767,195.45	10,696,959.27

SUMMARY.

	Balance in Treasury June 28, 1898.	Added since.	Disbursed.	Balance in Treasury May 20, 1908.
Choctaws, all funds	$585,000.99	$887,424.30	$966,914.26	$505,511.03
Chickasaws, all funds	1,206,695.66	1,166,818.62	2,001,130.34	372,383.94
Cherokees, all funds	2,776,445.60	7,829,930.03	4,900,941.04	5,705,434.59
Creeks, all funds	1,549,452.38	2,240,258.26	1,251,610.73	2,538,099.91
Seminoles, all funds	1,500,000.00	1,722,128.88	1,646,599.08	1,575,529.80
Total	7,617,594.63	13,846,560.09	10,767,195.45	10,696,959.27

TREASURY DEPARTMENT, *May 21, 1908.*

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 515.

CLAIM OF OWNERS OF MEXICAN STEAMSHIP TABASQUEÑO.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A REPORT BY THE SECRETARY OF STATE CONCERNING THE CLAIM OF THE OWNERS OF THE MEXICAN STEAMSHIP TABASQUEÑO AND OF HER CARGO AGAINST THE UNITED STATES, WITH ACCOMPANYING PAPERS.

MAY 25, 1908.—Read; referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith a report by the Secretary of State, with the accompanying papers, concerning the claim of the owners of the Mexican steamship *Tabasqueño* and of her cargo against the United States.

In view of our admitted liability in principle in this case, I recommend the claim to the favorable consideration of Congress, and that an appropriation of the sum mentioned by the Secretary of State be made in settlement of the claim.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *May 25, 1908.*

The PRESIDENT:

I have the honor to inclose herewith copies, in duplicate, of a memorandum prepared by the Solicitor for this Department, and copies, also in duplicate, of other papers, all in relation to the claim of the owners of the Mexican steamship *Tabasqueño* and of her cargo against the United States.

The claim was submitted to this Department by the Mexican embassy, and is based upon the arrest and detention of the ship and damage to her cargo during the war with Spain. The claim is made in the name of the owners of the vessel and cargo, all Mexican citizens.

The papers which have been furnished this Department by the Mexican embassy, supplemented by the investigation of the case which has been made by this Department, show that the vessel sailed from Vera Cruz on July 25, 1898, for Sagua la Grande, Cuba, with a general cargo of provisions, and was seized by the U. S. S. *Hawk* off the latter port on July 30, 1898. Sagua la Grande was not a blockaded port, the vessel was a neutral vessel, and the cargo was not contraband. The vessel was taken to Key West, and on August 17, 1898, was released at the instance of this Department, after protest by the Mexican embassy.

The Department, having admitted liability in principle in this case, has been engaged upon the question of the determination of the amount of damage which should be paid. The amount claimed by the Mexican embassy aggregated $73,977. The amount which the Department proposes in settlement as the result of an extended investigation of the claim is $13,485.70, calculated as foilows:

Claim for cargo	$11,200.00
Demurrage at Key West	1,500.00
Attorney's fees at Key West	650.00
Port charges	135.70
	13,485.70

with interest at 6 per cent per annum from the date of seizure.

The Mexican embassy has accepted the calculation of the Department with regard to the first three items above set forth; but no mention has been made by it in its recent negotiations with the Department of the item of port charges, although vouchers showing the actual payment of this amount by the claimants have been presented to the Department, as will appear from the detailed memorandum accompanying this report. It is therefore considered just that the item of $135.70 for port charges should be included among those for which reimbursement should be made.

The claim is accordingly referred to the President, with the recommendation that it be transmitted to Congress with a request for favorable consideration. The inclosed memorandum contains a history of the negotiations which have been conducted with the Mexican embassy regarding this case, and a full discussion of its merits in law and in fact. Correspondence between the Mexican embassy and this Department is also inclosed, showing the acceptance by the Mexican Government of the offer of settlement made by the Department.

Respectfully submitted.

ELIHU ROOT.

DEPARTMENT OF STATE,
Washington, May 23, 1908.

List of accompanying papers.

Memorandum by the Solicitor for the Department of State, May 10, 1907.
To the Mexican embassy, No. 60, July 2, 1907.
From the same, No. 2, July 6, 1907.
From the same, No. 47, October 5, 1907.
To the same, No. 220, April 13, 1908.
From the same, No. 202, May 18, 1908.

THE TABASQUEÑO v. THE UNITED STATES.

DEPARTMENT OF STATE,
Washington, May 10, 1907.

The records of the Department show that on the 30th of July, 1898 (during the war with Spain), the Mexican steamship *Tabasqueño*, which left Veracruz for the port of Sagua la Grande, Cuba, July 25, with a general cargo of provisions, was seized by the U. S. S. *Hawk* when about 10 miles from the latter port, and taken to Key West for adjudication. Sagua la Grande was not a blockaded port, and as the cargo was not contraband the Mexican embassy protested to this Department against the seizure, and the matter was at once taken up by Acting Secretary Moore with the Navy Department and the Department of Justice, with the result that on August 16 the United States marshal was instructed by the Attorney-General to release the vessel, and on August 17 the Department was informed that the vessel had been released.

On March 11, 1903, the Mexican ambassador presented a claim on behalf of the owners of the vessel and of the cargo, consisting of the following items:

1. Seven thousand eight hundred and fifty-two dollars and sixty cents, amount of expenses incurred during the detention of the ship in the port of Key West.

2. Sixty-three thousand one hundred and twenty-four dollars and forty cents, difference in the price of the cargo that ought to have been sold in due time in Sagua la Grande and was subsequently sold in Habana after the war ceased, all as a consequence of the capture.

3. Three thousand dollars, the amount at which Capt. Geronimo Andraca estimates his "moral" injuries suffered during the detention and seizure of his ship.

The ambassador called attention to the fact that the United States had made reimbursement in the similar cases of the *E. R. Nickerson* and the *Wary*, which were presented to this Department by the British and German ambassadors here and for which appropriations were made by Congress for the benefit of the British and German subjects who were interested as owners of the vessels and of their cargoes.

Accompanying the note of the Mexican ambassador is a long argument from counsel for the claimants to show that the United States is responsible in damages for the losses which were suffered as a consequence of the seizure. The Department replied on April 1 that it was "not disposed to question the principle of liability for the seizure and detention under the circumstances shown," provided clear proofs were made "of the Mexican citizenship of the shippers and of the owners of the vessel at the time of the seizure, as well as the captain and engineer who appear to have been the consignees." As it appeared that the corporation which is prosecuting the claim seemed to have acquired it since it arose, the Department stated that what was desired was evidence of the Mexican citizenship of the parties originally injured. The Department also informed the Mexican ambassador that the claim appeared to be greatly exaggerated. Special comment was made on the apparently unreasonable charges for demurrage and the abnormally high prices at which the cargo was estimated, which prices had been claimed to be the market prices prevailing in Sagua la Grande at the time of the seizure.

The Mexican ambassador replied, February 11, 1904, inclosing a statement from claimants' attorney, in which reference was made to sworn declarations of several merchants at Sagua la Grande already filed by him with the original note of the embassy presenting the claim, showing that the prices of goods then ruling at that place were the same as those now claimed for by claimants. Proof of the Mexican citizenship of the owners of the vessel at the time the claim arose and the assignees of the cargo is submitted; and though the further proof of the Mexican citizenship of the shipper is not furnished, it appears elsewhere in the papers that the shipper, Ruperto Villaneuva, is a Mexican citizen. At all events, if this Government makes any settlement for this claim it will be made with the Mexican embassy in full of all damages and the embassy will have the responsibility of the further disposition of the proceeds, the fact of Mexican ownership of the ship and cargo having been satisfactorily established.

The Department instructed Consul Baehr at Cienfuegos on March 11, 1904, to investigate and report as to the prices of grain and provisions ruling at Sagua la Grande at the beginning of August, 1898, and the consul replied on March 28, dispatch No. 52, that the prices were exceptionally high and that the affidavits submitted by the Mexican Government in support of the claim of the owners of the cargo may be accepted as true as showing the correct prices of goods at that time and place.

On May 6, 1904, the Department requested Mr. Aspiroz to furnish it with "the orders made by the purchasers of the cargo and the invoices of the shipment and bills of lading," "in order to enable the Department to investigate the matter completely." The promise was made to give prompt consideration to the claim when these documents were furnished, with a view to the disposition of the matter. The object of this note was to obtain a basis of settlement on the cost of the goods plus a reasonable percentage of profit.

The ambassador furnished in reply, on August 20, 1904, a number of receipted bills corresponding to all the items upon the bill of lading, except a small consignment of 289 bags of corn. While these bills do not constitute an invoice, it would appear that they represent the cost of the cargo as accurately as the invoice would if furnished. The ambassador, in transmitting the bills, describes them as "the various bills of purchase of the cargo put on board the said steamer in the port of Veracruz."

A duplicate of the bill of lading was furnished, the original having been attached to the ambassador's note of March 11, 1903. The ambassador calls attention to the fact that the bills of purchase of the cargo (showing the prices for which it was sold in Habana in October, 1898) were also forwarded, original and translation, with his aforesaid note of March 11, 1903, presenting the claim. It thus appears that the embassy has substantially complied with every request for information thus far made by this Department.

No definitive action has yet been taken upon the claim. On December 7, 1905, the new ambassador, Mr. Casasus, inquired the status of the claim, and the Department on the 16th of the same month answered that the matter would have consideration at the earliest possible moment. Again, on March 27, 1906, Mr. Casasus recalled the case to the Department's attention, referring to the

Department's promise of December 16, 1905, and asking that some preference be given to the claim.

As the Department has admitted liability in principle in this case, it is assumed that the only question now open to discussion is that of amount, and to this question the following is addressed:

AMOUNT OF COMPENSATION.

There are three general specifications of claim:

1. Losses at Key West during detention	$7,852.60
2. Losses of prospective profits on cargo	63,124.40
3. Moral injuries to captain of vessel	3,000.00
Total	73,977.00

The third item should be disallowed in toto. It would appear to have been added simply by way of aggravation. It is entirely unsupported, and even if supported, it is submitted that damages are not recoverable for moral suffering unattended by any injury to the person. (Hale on Damages, 92; Burdick's Law of Torts, 94; Beven on Negligence, 2d ed., 77.)

The specification of losses at Key West, which aggregate $7,852.60, is itemized as follows:

Demurrage, 22 days, at $300 per day	$6,600.00
Court fees	160.90
Attorney's fees	650.00
Cablegrams	81.00
Port charges	135.70
Hotel expenses of captain	25.00
Coal consumed	200.00
Total	7,852.60

With regard to the first item, it appears from the protest of the captain and the note of the Mexican ambassador presenting the claim that the vessel was seized July 30, 1898, and was released August 16 following, making a period of seventeen days. Five days may be allowed for the vessel's return to Veracruz after her release. This is the time taken by the vessel in going from Veracruz to Sagua, the point of capture, and the distance from Key West back to Veracruz, the point of the vessel's departure, is about the same as that between Veracruz and Sagua. It is customary to allow for the time taken in returning to the home port, and the claims of the *Nickerson* and the *Wary* were settled upon this basis. No mention has been made of the number of days which would ordinarily be consumed in returning from Key West to Veracruz, the point of embarkation, but attention has just been called to the fact that the distance between Veracruz and Key West, and between Veracruz and Sagua, where the vessel was seized, is approximately the same. Therefore the time elapsed before capture, which is determinable and amounts to five days, has been calculated as the equivalent which would be occupied in returning to the vessel's home port. It is not customary to allow for time prior to capture.

The period of the vessel's actual detention was seventeen days. Adding five days for her return to Vera Cruz makes a total of twenty-two days. This is the same total of time lost as is asked for by claimant.

With reference to the demurrage rate of $300 per day, it is claimed that this rate is not unreasonable and that the custom established by the steamship companies in ports of the Mexican Gulf is to charge $500 to $600 Mexican—that is, from $250 to $300 United States currency—per day. Claimants refer to the Ward Line of steamers to confirm this statement.

The *Tabasqueño*, according to the deposition of the captain, was a vessel of 303 tons. In the case of the *Three Bells*, a British vessel of 92 tons, seized at about the same time as the *Tabasqueño*, a claim of $1,000 was made for fifty-seven days' detention. In that case the Department estimated that if any allowance were made, the demurrage claim should be reduced to $850.[a] At this rate the demurrage for the *Tabasqueño*, calculated at a tonnage of 303, would amount to about $1,070. In the case of the *E. R. Nickerson*, referred to by the Mexican ambassador, claim was made for demurrage at £3 per day, the *Nickerson* being a 68-ton vessel. At this rate the demurrage for the detention of the *Tabasqueño* on a tonnage of 300 tons would amount to about $1,456. The estimate for the demurrage item in the *Nickerson* claim was reduced by the Department from £3 to £2 per day. If a similar reduction were made in this case, the amount to be allowed for demurrage would be two-thirds of $1,135, or about $970. In the case of the *Wary*, the other vessel referred to by the Mexican ambassador, claim was made at the rate of £8 per day for demurrage, the vessel being of only 22 tons register. The estimate, however, was for an allowance of £1½ per day. At this rate the demurrage item for the *Tabasqueño* would be about $2,250. An average of these three estimates gives a result of $1,430. I should say, therefore, that an allowance of $1,500 for this item would be just.

Of the balance of the items of the claim for moneys disbursed by the owners of the vessels at Key West, vouchers for attorney's fees, port charges, and court fees, aggregating $946.60, are furnished. It may be observed, however, concerning the bill for court fees, that it was represented to the owners by one of the employees of the court that the amount paid by them for court fees would be returned upon application. The Department is not informed whether such return or reimbursement has been made. The balance claimed to have been expended at Key West, for coaling some $200, cablegrams $81, and the captain's hotel expenses $25, amounting altogether to $306, is not supported by vouchers, and these should be furnished if an allowance is to be made for these items.

In relation to the principal item of the claim, that is, $63,124.10 (American), being the difference between the price which the cargo would have brought if it had been delivered in due time at Sagua la Grande and the amount for which it was actually sold after the war, the bills of lading showed that the goods as described were shipped on the *Tabasqueño*. The prices, unreasonably high as they seem to be, are supported by affidavits of merchants at Sagua la Grande and confirmed by our own consul at Cienfuegos. The goods were sold at Habana, and claimants present the declarations and accounts of the commission merchants showing what the cargo sold for. The gross receipts of the sales were $21,928.36, but the expenses of sale were $14,377.37, leaving only $7,550.99 as the actual proceeds.

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[a] The Department subsequently denied all liability for this seizure and rejected the claim in toto.

Concerning the sale of the goods it must be borne in mind, first, that the cargo was of a perishable nature, and, second, that it was not sold in Habana until the middle of October, two months after the vessel's release. The various memoranda of sale show that different portions of the same consignment brought five or six different prices, according to quality. Nothing could show more plainly the deterioration of the cargo than these memoranda, and it is self-evident that the greater amount of the deterioration was due to the claimants' own laches, by failing to market their goods more promptly. There is nothing to show even that the portions of the cargo which were in the best condition were up to the market standard, and even the best prices obtained may have been much below the regular market price. In other words, the Department does not know, and has no way of ascertaining, how much the cargo would have brought if it had been sold directly after the release of the vessel, and, therefore, the Department does not know how much more than the $21,928.36, which was actually brought, would have been realized but for the laches of the claimants. What the Department does know is that at the time of the sale some portions of the cargo had shrunk in value several hundred per cent and that parts of it were thrown away altogether. These losses this Government is now called upon to make good.

The expenses of the sale of the cargo are made up of "customs duties, drayage, commissions, insurance, storage," etc., much the largest item being customs duties. This item in the case of one shipment alone, the lard, being $5,769.53—nearly as much as the gross proceeds of the lard. It must be assumed that had the cargo been delivered in due time at its destination at Sagua la Grande the claimants would have been required to pay the customs duties, commissions, and most of the other items of charge, and proper deductions should, therefore, be made from the claim as presented, if the Department decides to accept the basis of prospective profits as the proper one for the adjustment of the claim.

An attempt has been made in the few immediately foregoing paragraphs to show the practical impossibility of arriving at a fair estimate of damages upon the basis of prospective profits; but, in addition to the impracticability of this method, I am convinced from an examination of the precedents that it is incorrect in point of law, and that the estimate upon which settlement should be made is the cost of the goods at the port of embarkation plus a reasonable percentage as profit upon the venture.

A fair way to examine the question would be to consider it as if it would come before the Supreme Court of the United States for final decision or revision and judge it by the rules which that court would almost certainly apply if an appeal lay to that tribunal. There is a numerous class of cases, chiefly actions for beach of contract and involving in most cases the law of common carriers, where special considerations apply, in which it is held that the proper measure of damages is the value of the goods at the time and place where the carrier has contracted to deliver them. The basis of the doctrine in these cases is that it is the policy of the law to hold the carrier liable for the full value at the time and place of destination to remove from him all temptation to fraud.

But the rule of damages in cases of marine torts is an entirely different one. It was announced as early as 1794 by the Supreme Court

of the United States, in the case of Del Col *v.* Arnold (3 Dall., 333) that for an unlawful spoliation of cargo the measure of responsibility was "the full value of the property injured or destroyed."

The rule was next enunciated by Mr. Chief Justice Marshall in the case of the *Charming Betsy*, 2 Cranch, 64 (1804), wherein it was ordered that—

the commissioners be instructed to take the actual prime cost of the cargo and vessel with interest thereon, including the insurance actually paid and such expenses as were necessarily sustained in consequence of bringing the vessel into the United States, as the standard by which the damages ought to be measured.

The rule of damages thus established has been followed from that time through a series of decisions entirely unbroken and unchanged.

In the case of the *Lively*, 1 Gall., 325 (1812), Mr. Justice Story, after reviewing all the authorities up to that time involving analogous principles, stated (p. 324) that he was not aware of a single authority in the higher courts of admiralty in which supposed profits formed an item of damage in cases of restitution. The learned justice continues:

Independent, however, of all authority, I am satisfied upon principle that an allowance of damages upon the basis of a calculation of profits is inadmissible. The rule would be in the highest degree unfavorable to the interests of the community. The subject would be involved in utter uncertainty. The calculation would proceed upon contingencies, and would require a knowledge of foreign markets to an exactness in point of time and value which would sometimes present embarrassing obstacles. Much would depend upon the length of the voyage and the season of arrival, much upon the vigilance and activity of the master, and much upon the momentary demand. After all, it would be a calculation upon conjecture, and not upon facts. Such a rule, therefore, has been rejected by courts of law in ordinary cases, and instead of deciding upon the gains or losses of parties in particular cases, an uniform interest has been applied as the measure of damages for the detention of property. * * *

Again in 1817, in the *Anna Maria* (2 Wheat., 327), Mr. Chief Justice Marshall announced the same rule, and the next year, in the case of the *Amiable Nancy* (3 Wheat., 560), Mr. Justice Story, citing with approval the cases of the *Anna Maria* and Del Col *v.* Arnold, said:

Another item is $3,500, for the loss of the supposed profits of the voyage on which the *Amiable Nancy* was originally bound. In the opinion of the court, this item was also properly rejected. The probable or possible benefits of a voyage, as yet in fieri, can never afford a safe rule by which to estimate damages in cases of marine trespass. There is so much uncertainty in the rule itself, so many contingencies which may vary or extinguish its application, and so many difficulties in sustaining its legal correctness, that the court can not believe it proper to entertain it. In several cases in this court the claim for profits has been expressly overruled; and in Del Col *v.* Arnold (3 Dall., 333), and the *Anna Maria* (2 Wheat., Rep., 327), it was, after strict consideration, held that the prime cost, or value of the property lost, at the time of the loss, and in case of injury, the diminution in value by reason of the injury, with interest upon such valuation, afforded the true measure for assessing damages. This rule may not secure a complete indemnity for all possible injuries, but it has certainty and general applicability to recommend it, and in almost all cases will give a fair and just recompense.

Two years later, in 1820, in the case of *La Amistad de Rues* (5 Wheat., 389), Mr. Justice Story said:

In the cases of marine torts this court have deliberately settled that the probable profits of a voyage are not a fit mode for the ascertainment of damages. It is considered that the rule is too uncertain in its own nature and too limited in its applicability to entitle it to judicial sanction.

And in 1824 (*The Apollon*, 9 Wheat., 362) the same great justice declared:

This court, on various occasions, has expressed its decided opinion that the probable profits of a voyage, either upon the ship or cargo, can not furnish any just basis for the computation of damages in the cases of marine tort. The basis has accordingly

been, in every instance, rejected. Where the vessel and cargo are lost or destroyed, the just measure has been deemed to be their actual value, together with interest upon the amount, from the time of the trespass. * * * And it may be truly said that if these rules do not furnish a complete indemnification in all cases, they have so much certainty in their application, and such a tendency to suppress expensive litigation, that they are entitled to some commendation, upon principles of public policy.

* * * * *

The second item is perfectly correct, except as to the allowance of the 10 per cent. The cargo was sold at the market, though not at the port, of its destination, and from the appraisement it appears to have sold for a higher price than it was valued at. The ground of the allowance of the 10 per cent then fails, for that is given for supposed losses upon a forced sale, or a falling market.

In a different species of marine tort, but one apparently involving the same principle—namely, damages caused by collision—Mr. Chief Justice Taney held that the actual damage sustained at the time and place of the injury is the measure of damages and not the probable profits at the port of destination. (Smith *v.* Condry, 1 Howard, 28, 1843.) A similar rule was likewise laid down in 1871, by Mr. Justice Swayne, where a cargo was lost in transitu. (*The Telegraph* and *Vaughan*, 14 Wall., 258.)

The principle expounded in the foregoing decisions is followed by Mr. Justice Nelson in the case of the *Ocean Queen* (5 Blatch., 493), citing the *Anna Maria*, Smith *v.* Condry, and the *Lively*.

Upon the authority of the foregoing cases, it is submitted that the amount of damage sustained by the owners of the cargo of the *Tabasqueño* must be measured by the cost of the goods at the port of embarkation, plus a reasonable percentage for profit. The bills of purchase, excluding the corn, which have been furnished to the Department, aggregate $35,891.37 (Mexican), equivalent to about $18,000 in our currency. The Department does not know the cost of the corn, as no bill of purchase has been furnished for this item. Its selling price in Habana was $738.76. By a comparison of the cost of the cargo in Vera Cruz and the gross selling price therefor in Habana, I find that they are approximately the same. An estimate for the corn is therefore placed at $750. This would make the estimate for the entire cargo $18,750.

It is true that a more liberal rule was applied by England in the Delagoa Bay seizures (cf. the cases of *The Mashona* and *The Beatrice*, Foreign Relations, 1900, pp. 529–618) during the South African war, where shipments of provisions owned by American merchants were in several cases paid for at the price prevailing in the port of destination at the time of the seizures. But it will be recalled that these cases were not strictly analogous to the present one, for it was there held that there was probable cause for the seizure and detention of the vessels, and the offer to purchase the supplies was made by the British Government, because it appeared to be a convenient way of making good to the neutral owners the loss which, in view of that Government, would have accrued to the owners through the delay caused by the arrest of the carrying ship; and in the case of one of the American claimants Lord Salisbury said that the payment was made purely ex gratia. (Foreign Relations, 1900, pp. 617–618.)

CONCLUSIONS.

In view of the fact that the voyage of the *Tabasqueño* was made in good faith and that she was engaged in an innocent traffic, I would incline to the view that a somewhat liberal interpretation might be

given to the rule of damages governing the cargo if it were not for the fact that the vessel lost so much time after her release at Key West, in the middle of August, before proceeding to Habana, the goods not being sold in that city until almost two months thereafter. The cargo would have been much more valuable and would have brought a much higher figure if the vessel had proceeded at once to Habana. It appears to me, therefore, that this Government would be acting generously if it fixed a compensation which would save the claimants harmless on account of their venture and set off an allowance for probable profits against the loss by deterioration during the period of the two months' delay for which this Government is in no way responsible. This loss is an indeterminate one, but it is certainly equivalent to any fair percentage which would be allowed by a prize court for profit reckoned on the prime cost of the cargo.

If this basis of settlement is adopted, the cost of the cargo will be placed at $18,750. Deducting from this the sum of $7,550.99, proceeds of the sale at Habana, would leave in round numbers $11,200, which may be paid on account of the cargo, to which it would be no more than just to add interest at 6 per cent from the time of the injury to date of satisfaction. If the claimants can show that they were not responsible for the two months' delay in the sale, I will recommend that an additional allowance of $3,000 be made for profits—approximately 15 per cent upon their venture.

With regard to the amount of damages which may be paid on account of the vessel, I recommend that an allowance of $1,500 be made for demurrage, $785.70 for attorneys' fees and port charges, for which vouchers have been furnished, and that the embassy should be asked to furnish vouchers for the items of coal, cablegrams, and the captain's hotel expenses, and also to state whether the charge of $160.90 for court fees was reimbursed to claimants; that Mr. Creel, the new Mexican ambassador, be advised of the Department's conclusions in the premises, and that he be informed that upon receipt of the additional data called for the Department will make a recommendation to Congress asking for an appropriation for reimbursement of the claimants in the sums as calculated in the foregoing memorandum.

Respectfully submitted.

JAMES B. SCOTT.

No. 60.] DEPARTMENT OF STATE,
Washington, July 2, 1907.

EXCELLENCY: Answering your note No. 50 of the 9th of May last, I have the honor to inform you that the Department has made a careful examination of the claim submitted by your embassy in behalf of the owners of the ship and cargo on account of the seizure of the Mexican steamship *Tabasqueño* by the U. S. S. *Hawk* July 30, 1898, off the port of Sagua la Grande, Cuba, and the subsequent detention of the vessel at Key West.

The evidence submitted by your embassy in support of this claim shows that there are three general specifications of damage:

1. Losses at Key West during detention	$7,852.60
2. Losses of prospective profits on cargo	63,124.40
3. "Moral" injuries to captain of vessel	3,000.00
Total	73,977.00

With regard to the third item the Department is unable to recommend that any allowance be made. It appears to be entirely unsupported, and the Department is constrained to say that, even if it should be sustained by documentary or other proof, the decided preponderance of legal authority is to the effect that damages are not recoverable for mental suffering unattended by any injury to the person.

With regard to the specification of losses at Key West during the detention of the vessel, the Department notes that the principal item of claim is for the detention of the vessel. The Department accepts the basis proposed by the claimant, of twenty-two days, including seventeen days actual detention and five days for return to port of embarkation, but it is unable to agree to the reasonableness of the charge of $300 per day for such detention. After calculating the amounts paid for demurrage in cases of other seizures made by American cruisers during the late war, where the vessels were ultimately released, the Department has reached the conclusion that a total allowance of $1,500 for demurrage would be just under the circumstances.

For the balance of the items of the claim for moneys disbursed by the owners of the vessel at Key West, vouchers for attorney's fees, court charges, and court fees, aggregating $946.60, are furnished. It may be observed, however, concerning the bill for court fees, amounting to $160.90, that it was represented to the owner by one of the employees of the court that the amount paid by them for this charge would be returned upon application. The Department is not informed whether such return or reimbursement has been made. The balance claimed to have been expended at Key West for coal consumed, $200, cablegrams, $81, and the captain's hotel expenses, $25, amounting altogether to $306, is not supported by vouchers. Vouchers should be furnished for these items before an allowance can be made therefor.

The principal item of the claim is for $63,124.10, being the difference between the price which the cargo would have brought if it had been delivered in due time at Sagua and the amount for which it was actually sold after the war.

The bills of sale at Habana show that the gross receipts were $21,928.36, while the expenses of the sale were $14,377.37, leaving $7,550.99 as the actual proceeds.

Concerning the sale of the goods, it is observed that the cargo was of a perishable nature and that it was not sold in Habana until the middle of October, two months after the vessel's release. The various memoranda of sale show that different portions of the same consignment brought five or six different prices according to quality. These memoranda plainly show the deterioration of the cargo, and it would appear that the greater amount of this deterioration was due to the claimants' laches in failing to market their goods more promptly. The Department does not know how much the cargo would have brought if it had been sold directly after the release of the vessel, and therefore it is unable to estimate how much more than the sum which it actually brought would have been realized but for the laches of the claimants.

The expenses of the sale of the cargo are made up of "customs duties, drayage, commissions, insurance, storage," etc., much the

largest item being for customs duties; this item in the case of one shipment alone, the lard, being $5,769.53—nearly as much as the gross proceeds of the lard. It must be assumed that had the cargo been delivered in due time at its destination at Sagua, the claimants would have been required to pay the customs duties, commissions, and most of the other items of charge.

The observations immediately foregoing may serve to indicate the practical impossibility of arriving at a fair estimate of damages upon the basis of prospective profits, but in addition to impracticability of this method, the Department is convinced from an examination of the precedents that such a basis of damages is incorrect in point of law, and that the estimate upon which settlement should be made in the ordinary case of a marine tort is the cost of the goods at the port of embarkation, plus a reasonable percentage of profit on the venture.

As early as 1804, in the case of *The Charming Betsy*, this rule was enunciated by Mr. Chief Justice Marshall. (*The Charming Betsy*, 2 Cranch, 64, 1804.) In that case it was ordered that—

> the commissioners be instructed to take the actual prime cost of the cargo and vessel, with interest thereon, including the insurance actually paid and such expenses as were necessarily sustained in consequence of bringing the vessel into the United States, as the standard by which the damage ought to be measured.

The rule of damages thus established has been followed from that time through a series of decisions entirely unbroken and unchanged. (*The Lively*, 1 Gall., 325, 1812; the *Anna Maria*, 2 Wheat., 327, 1817; the *Amiable Nancy*, 3 Wheat., 560; *La Amistad de Rues*, 5 Wheat., 389, 1820; the *Apollon*, 9 Wheat., 362, 1824. And see also the collision cases: Smith *v.* Condry, 1 How., 28, 1843; *The Telegraph* and *Vaughan*, 14 Wall., 258, 1871.)

In the case of the *Apollon* (9 Wheaton, 362) Mr. Justice Story said:

> This court, on various occasions, has expressed its decided opinion that the probable profits of a voyage, either upon the ship or cargo, can not furnish any just basis for the computation of damages in the cases of marine tort. The basis has accordingly been, in every instance, rejected. Where the vessel and cargo are lost or destroyed, the just measure has been deemed to be their actual value, together with interest upon the amount, from the time of the trespass. * * * And it may be truly said that, if these rules do not furnish a complete indemnification in all cases, they have so much certainty in their application, and such a tendency to suppress expensive litigation, that they are entitled to some commendation, upon principles of public policy.
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> The second item is perfectly correct, except as to the allowance of the ten per cent. The cargo was sold at the market, though not at the port of its destination; and from the appraisement it appears to have sold for a higher price than it was valued at. The ground of the allowance of the 10 per cent., then, fails, for that is given for supposed losses upon a forced sale or a falling market.

Upon the authority of the foregoing cases this Department concludes that the amount of damage sustained by the owners of the cargo of the *Tabasqueño* must be measured in the first place by the cost of the goods at the port of embarkation. Whether or not, under all the circumstances, a percentage should be allowed for profits is reserved for the consideration in a subsequent paragraph.

Bills of purchase covering nearly all of the cargo have been submitted by your embassy, amounting to the equivalent of about $18,000 in United States currency. Estimating the value of the corn, for which no bill of purchase was submitted at $750, the total estimate for the entire cargo amounts to $18,750.

Upon this original outlay a credit must be deducted of $7,550.99, the proceeds of the sale at Habana, which the claimants have already received. This would leave in round numbers $11,200 to be paid on account of the cargo.

With regard to an allowance for profits, the Department is of the opinion that under the circumstances of this case, as presented to it, no recommendation should be made. No explanation has been offered of the claimants' failure sooner to market their cargo after the release of the vessel. It seems evident to this Department that if the sale had been made before the cargo, which was known to be perishable, had been allowed to deteriorate, a much larger sum could have been realized than that actually received at the sale at Habana, and the balance remaining to be paid in order to save the claimants harmless would have been correspondingly reduced. The Department therefore sees no reason why it should make good the deficit and in addition make an allowance for profit where the claimants' own apparent negligence had minimized if not made impossible the opportunity for any profit at all.

The Department would be glad to have the embassy supply further proofs as to the minor items of expense at Key West, to which the attention of the embassy has been directed in the foregoing paragraphs, and it would also be glad to be informed as to whether the Mexican Government agrees with the calculations as above made, with respect to an allowance of $1,500 for demurrage and $11,200 on account of the cargo. On all allowances the Department is of the opinion that 6 per cent interest should be added, from the time of the injury to the date of satisfaction. If these views meet with the concurrence of the Mexican Government, the Department will recommend to Congress, at its next session, an appropriation for the settlement of the case in accordance with the views above expressed.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

No. 2.] EMBASSY OF MEXICO IN THE UNITED STATES,
New York, July 6, 1907.

HONORABLE SIR: I have had the honor to receive your note No. 60, of the 2d instant, in which you were pleased to reply to mine of May 9 last, in regard to the claim made on behalf of the steamship *Tabasqueño.*

In reply I beg to inform you that I have already brought the substance of your note to the knowledge of my Government for such action as may be proper.

Accept, sir, etc.,

JOSE F. GODOY,
First Secretary, Acting.

Hon. ROBERT BACON,
Acting Secretary of State of the United States.

[Translation.]

No. 47.] EMBASSY OF MEXICO IN THE UNITED STATES,
Washington, D. C., October 5, 1907.

HONORABLE SIR: As offered in my note of the 6th of July last, I sent to my Government a copy of your Department's note of the 2d of the same month, concerning the claim of the steamer *Tabasqueño.*

The department of foreign relations of my Government transmitted the contents of the said note to the interested parties, who replied that while accepting in the main your Department's proposal, notwithstanding the valid arguments they could oppose thereto, they wished to remark that:

1. The item of attorneys' fees at Key West, in the amount of $650, was not, according to the claimants' statement, discussed by your Department, from which, in their opinion, it must be inferred that it is allowed. As to the courts' fees and charges, the return of which had been offered, the claimants have not yet received them, in spite of their efforts.

2. They believe that their outlay in coal, cablegrams, hotel bills, etc., are sufficiently proven by the 15 vouchers filed by them. As these papers, transmitted with this embassy's note No. 335, of March 11, 1905, are, to the best of knowledge and belief, in your Department in the set marked "A," I suppose it will be easy to verify the claimants' statement on this point.

3. They accept, although they consider it very small, the sum of $11,200 named by your Department as an indemnity for the cargo sold out of season.

To sum up, they make the following statement of items to be paid:

1. Twenty days' demurrage	$1,500.00
2. Attorneys' fees at Key West	650.00
3. Court costs and charges	160.90
4. Coal, hotel bills, telegrams, etc	306.00
5. Indemnity for the cargo	11,200.00
Total	13,816.90

plus 6 per cent interest from the month of July, 1898, date of the occurrence.

I beg you to be pleased to let me know whether you concur in the foregoing statement, so that I may communicate it to my Government and effect a final settlement of this case, through the recommendations referred to in the end of your note.

Accept anew, honorable sir, the assurances of my high consideration.

JOSÉ F. GODOY.

Hon. ROBERT BACON,
Acting Secretary of State of the United States.

Serial No. 220.] DEPARTMENT OF STATE,
Washington, April 13, 1908.

SIR: Referring to your note, No. 47, of October 5, 1907, communicating the reply of the Mexican Government relative to the claim of the owners of the Mexican ship *Tabasqueño* against the United States, I have the honor to say that the Department has noted that the Mexican Government accepts on behalf of the claimants the Depart-

ment's calculations of $11,200 and $1,500 which is proposed to recommend to Congress as the sum to be paid for cargo and demurrage, respectively.

As regards the item of $650 for attorney's fees at Key West, which is enumerated in the Department's note of July 2 as duly covered by voucher, the claimants have correctly understood the Department as believing that this item should be included in the amount which the Department will recommend to Congress for reimbursement.

The Department notes the statement of the embassy that the claimants believe that their outlay in coal, cablegrams, hotel bills, etc., is sufficiently proved by vouchers which have already been submitted by them. Another careful examination has been made of all the inclosures transmitted with the embassy's note, No. 335, dated March 11, 1903, which were thought to contain evidence of expenditures for these items, but no such papers can be found. There is a statement from the captain of the vessel to the effect that these expenditures were made, but this statement is not accompanied by vouchers. It would appear, therefore, that vouchers should be submitted to cover these items of loss before they can properly be included in the Department's recommendation to Congress.

With regard to the item of "court costs and charges, $160.90," which the claimants say has not yet been refunded to them, in spite of their efforts, the Department is in receipt of a recent communication from the Attorney-General, in which he says that the records of the district court of the United States for the southern district of Florida show that the above-mentioned sum has been on deposit in the registry of the court since May, 1898, being entered as "costs ordered refunded owners *Tabasqueño*, which they refused to receive." The United States attorney for the southern district of Florida advises that a warrant may be drawn for this amount under order of the district judge in favor of the proper person or persons entitled thereto upon petition to the court, setting up such facts under oath as would satisfy the court of the rightful ownership of the funds by the petitioner. The Department, therefore, believes that it will not be necessary to recommend a reimbursement of this item by Congress, inasmuch as it would seem that the claimants can obtain this refundment upon proper application to the court.

Upon receipt of the embassy's reply respecting the items of "coal, hotel bills, telegrams, etc.," above referred to, the Department will be in a position to transmit the papers to Congress.

Accept, sir, the renewed assurance of my high consideration.

ROBERT BACON,
Acting Secretary.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

[Translation.]

No. 202.] EMBASSY OF MEXICO IN THE UNITED STATES,
Washington, May 18, 1908.

YOUR EXCELLENCY: Referring to the previous correspondence regarding the owners of the Mexican boat *Tabasqueño* against the United States, and especially to note No. 220 of the Department

under your worthy charge, dated April 13 last, and relating to this subject, I have the honor to inform you that my Government, in behalf of the claimants, accepts the payment of the following amounts: $11,200 (eleven thousand two hundred dollars) for the cargo, $1,500 (one thousand five hundred dollars) for delay or detention, and $650 (six hundred and fifty dollars) for the fees for the attorneys of the United States, plus interest at 6 per cent on the amounts calculated as due since the time the damage was caused—July 30, 1898—until the payment is made.

I must add that, with regard to the item of $160.90 (one hundred and sixty dollars and ninety cents) for judicial costs, the claimants will follow the indications of your Department by applying at the proper time and in the proper manner to the district judge of Florida and, finally, that the claimants agree that your Department shall not accept the chapter on "expenses for coal," "hotel bills," "telegrams," etc., and withdraw this chapter.

In view of the acquiescence of the claimants, I request your excellency to transmit, as you state in your aforementioned note, No. 220, all the documents relating to the subject to the Congress of this country recommending the payment of the amounts specified, in order that, if possible, the payment may be allowed and ordered during the present session of Congress.

I take pleasure in reiterating to your excellency the assurances of my highest and most distinguished consideration.

JOSE F. GODOY.

His Excellency ELIHU ROOT,
Secretary of State of the United States.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 517.

REPORT ON EMPLOYMENT OF UNITED STATES SOLDIERS IN ARRESTING BY-A-LIL-LE AND OTHER NAVAJO INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A REPORT, IN RESPONSE TO A SENATE RESOLUTION OF APRIL 25, 1908, WITH RESPECT TO THE EMPLOYMENT OF UNITED STATES SOLDIERS DURING THE YEAR 1907 WITHIN OR NEAR THE NAVAJO INDIAN RESERVATION, ARIZ., IN ARRESTING BY-A-LIL-LE AND OTHER NAVAJO INDIANS, ETC.

MAY 25, 1908.—Referred to the Committee on Indian Affairs and ordered to be printed.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1908.

SIR: By direction of the President, I have the honor to make report in response to the following resolution of the Senate, dated April 25, 1908.

Resolved, That the Secretary of the Interior be, and he is hereby, directed to furnish for the information of the Senate copies of all correspondence and other papers on file in his Department or in the office of the Commissioner of Indian Affairs relating to employment of United States soldiers during the year nineteen hundred and seven within or in the vicinity of the Navajo Indian Reservation, Arizona, in arresting By-a-lil-le and other Navajo Indians, which resulted in the killing by the soldiers or others of two Indians and the wounding of at least one other Indian, and such correspondence and other data, if any, as will furnish the names and the number of Navajo and other Indians who were imprisoned at any time within the three years last past, together with the names of those now imprisoned, in the Territories of New Mexico and Arizona, the charges against each of said Indians, by whom made, by what legally constituted court or other proceeding they were adjudged guilty of the charges against them, as a result of which the said Indians were imprisoned, the terms of their sentences, and whether at hard labor or otherwise.

The facts relating to By-a-lil-le and certain other Navajos are as follows:

Mr. Shelton, superintendent of the San Juan Indian School, New Mexico, reported March 29, 1907, that there was a probability of serious trouble arising among a settlement of Indians on a part of the

Navajo Indian Reservation some 40 miles northwest of his agency and on the south side of the San Juan River, the settlement being under the leadership of By-a-lil-le. The situation became so serious that a special agent (R. S. Connell) was sent to the settlement to make a careful investigation and report, which he did on April 6 1907. He reported that By-a-lil-le and his confederates were heavily armed; that they had made threats to kill the superintendent and his farmer; that they had depredated upon the stock of the whites bordering on the reservation, and done many things which were wrong and reprehensible. The special agent recommended that troops be sent there to disarm the Indians and that the "worst medi cine men be deported."

The superintendent brought this matter to the attention of the Office again on September 18, 1907, recommended that at least two troops of cavalry be sent to that part of the Navajo Reservation where By-a-lil-le and his renegades gathered, and that he be arresed.

I presented the matter to the Secretary of War on October 12, 1907, for an expression of his views as to the feasibility of stationing two troops of cavalry at Aneth, Utah, in the vicinity of this hostile band of Indians where the presence of the soldiers would be an object-lesson for them and prevent disturbance.

The Acting Secretary of War directed the commanding general to cause two troops of cavalry from Fort Wingate, N. Mex., under an officer of experience and good judgment, to move northward to the region indicated. The object of the march was to show ill-disposed Indians that there were troops within call should they for any cause resort to violence. It was hoped that no serious trouble would arise.

The soldiers were under the command of Captain Williard. He and his fellow-officers, after reaching the spot and observing the situation, decided that By-a-lil-le and his men should be arrested in order to avoid a serious conflict. Accordingly they made a night march upon him and surprised and captured him and his immediate followers about daybreak the next morning. While their arrest was being made the troops were fired upon by other Indians in the vicinity. The horse of Captain Williard's first sergeant was shot. The troops were ordered to defend themselves and returned the fire, killing two Indians and wounding one, as it appears. By-a-lil-le and nine of his outlaws were arrested. One, Nick Lee, was allowed to return home after the other prisoners had been sent to Fort Huachuca, where they are now confined, except one, named Mele-yon, who has been allowed to return to the southern part of the Navajo Reservation under the jurisdiction of the superintendent in charge of the Navajo Agency at Fort Defiance, Ariz.

Eight of the Navajo prisoners are still in prison, where they are to be confined for an indefinite period at hard labor. They can be released whenever it may be deemed wise to do so, each case to be considered on its own merits. The time for the release of these prisoners has been left to the judgment of the War Department.

I attach copies of the following letters, which give the detail of these facts:

1. First report of Superintendent Shelton to the Commissioner of Indian Affairs, dated March 29, 1907.
2. Report of Special Agent R. S. Connell to the Commissioner of Indian Affairs, dated April 6, 1907.

3. Report of Superintendent Shelton to the Commissioner of Indian Affairs, dated September 18, 1907.
4. Letter from the Secretary of the Interior to the Secretary of War, October 12, 1907.
5. Letter from the Acting Secretary of War to the Secretary of the Interior, October 15, 1907.
6. Letter from the Acting Secretary of War to the Secretary of the Interior, October 23, 1907.
7. Telegram from Superintendent Shelton to the Commissioner of Indian Affairs, October 30, 1907.
8. Report of Captain Williard to the Adjutant-General, October 30, 1907.
9. Letter from Superintendent Shelton to the Commissioner of Indian Affairs, November 4, 1907.
10. Letter from the Secretary of the Interior to the Secretary of War, November 9, 1907.
11. Letter from the Acting Secretary of War to the Secretary of the Interior, November 16, 1907.
12. Report from Superintendent Shelton to the Commissioner of Indian Affairs, November 16, 1907.
13. Report from Superintendent Shelton to the Commissioner of Indian Affairs, November 16, 1907.
14. Letter from the Secretary of the Interior to the Secretary of War, November 22, 1907.
15. Letter from the Acting Secretary of War to the Secretary of the Interior, November 25, 1907.
16. Letter from the chief clerk of the Indian Office to Superintendent Shelton, December 4, 1907.
17. Letter from the Acting Secretary of the Interior to the Secretary of War, December 14, 1907.
18. Letter from the Assistant Secretary of the Interior to the Secretary of War, February 1, 1908.
19. Letter from the Acting Commissioner of Indian Affairs to the superintendent Navajo Agency, Fort Defiance, February 5, 1908.
20. Letter from the superintendent Navajo Agency, Fort Defiance, to the Commissioner of Indian Affairs, February 24,1908.
21. Letter from the Acting Commissioner of Indian Affairs to Superintendent Shelton, March 19, 1908.
22. Letter from Superintendent Shelton to the Commissioner of Indian Affairs, March 28, 1908.
23. Letter from the Acting Commissioner of Indian Affairs to the superintendent of the Navajo Agency, April 8, 1908.
24. Letter from Superintendent Harrison, Navajo Agency, Fort Defiance, to the Commissioner of Indian Affairs, May 7, 1908.

I call particular attention to the reports of Superintendent Shelton of March 29, 1907, and Special Agent Connell of April 6, 1907, which show very clearly the character of these Indians—that they were outlaws who had been committing atrocious crimes and were in danger of inciting other Indians to violence. The report of Captain Williard, under date of October 30, is very explicit, and shows that he acted with sound judgment and that the troops under him took no action other than that which was proper and necessary. The letters from February 1 to March 28 show the care given the cases of individual prisoners when the question of their release is under consideration.

After the arrest of these prisoners complaint was made by Rev. Howard R. Antes, a missionary stationed at the Navajo Agency, making serious charges against Superintendent Shelton and Captain Williard, alleging that the Indians were not outlaws, and that the killing of some and the arrest of others was a gross outrage. By direction of the President, Col. H. L. Scott, of the United States Army, an officer recognized for his thorough knowledge of Indian affairs and Indian life, was directed to make a most searching investigation of the case. Colonel Scott went to the agency, heard Reverend Mr. Antes and all witnesses he desired to present, and took the testimony of

various other persons. As a result, the charges were absolutely disproved, and Mr. Antes, who made the charges, gave the following written statement to Colonel Scott:

At the close of an investigation at this place which you have conducted for the part two days, relative to the charges contained in certain letters addressed to Senatos H. M. Teller during the past several months against Mr. W. T. Shelton, superintendent of the San Juan Indian School, and his farmer, J. M. Holley, and others both in and out of the Government service here and at Washington, D. C., and Capt. H. O. Williard, Fifth Cavalry, U. S. Army, and his troop, on the morning of October 28, 1907, when certain Navajo Indians were killed and others arrested, I have learned that the information upon which such charges were made was and is unreliable and untrue. Believing, therefore, that my charges were unwarrantable, I therefore retract them and extend an apology to everybody concerned. I do this of my own free will and accord, without suggestion or pressure from anyone.

Mr. Antes further sent to the editor of the Evening Post, the paper which had originally published the charges, a letter of which the following is a copy.

ANETH, UTAH, *April 23, 1908.*

EDITOR OF DENVER POST:

During the month of November, 1907, you published a letter signed by myself in which I made certain charges against W. T. Shelton, superintendent of San Juan Indian School, and his farmer, J. M. Holley, and Captain Williard, of the United States Army, and his troop, relating to an occurrance on October 28, 1907, at Aneth, Utah, in which two Navajo Indians were killed and nine others arrested and imprisoned. I have now come to believe that the information upon which I based those charges was unreliable and untrue. Believing, therefore, that my charges were unwarrantable, I therefore retract them, and extend an apology to everybody concerned, with a request to you that you give this letter the same publicity that my former letter had.

Very respectfully, yours,

HOWARD R. ANTES.

It is not deemed necessary to transmit to the Senate the voluminous report of the testimony taken by Colonel Scott, for the action of Mr. Antes in thus withdrawing his charges and acknowledging them to have been untrue, shows the thoroughness and fairness of Colonel Scott's investigation.

Within the three years last past there have been three groups of Navajo and other Indians imprisoned (1) the Chin Lee group, (2) the Oraibi group, and (3) the San Juan or By-a-lil-le group.

Of the Chin Lee group seven Indians were arrested in December, 1905, and taken to Alcatrez Island, in San Francisco Harbor; they were afterwards in the summer of 1906 transferred to Fort Huachuca, Ariz. Their names are as follows:

Denet Lakai Tol-Zhin Glahdy Do-Yal-Ke	Sentenced for two years; hard labor.
Winslow Tsosa Begay Ush Tilly	Sentenced for one year; hard labor.

These have all been released and allowed to return to the Navajo reservation.

The charges made by Superintendent Perry against these seven Indians were that they formed part of a gang of disreputable and vicious Navajoes who captured him and by threat forced him to pardon one of their number who had committed rape; that one of them had resisted arrest; and that they were likely to make more trouble at a dance soon to be held.

The Commissioner reported the matter to the Department in his letter of December 13, 1905, recommending that these Indians be taken by the military authorities to Alcatraz Island and punished by confinement at hard labor. This recommendation was adopted by the Department. The whole matter is fully set forth in the Commissioners' report for 1906, pages 121 to 124, and report of 1907, pages 91 and 92. There were no court proceedings.

Of the Oraibi group 18 Indians of the following names were handled, in October, 1906, as follows:

HOPIS.	
Ta-wa-hong-ni-wa,	Temporarily incarcerated, then released and banished from the reservation.
Yu-ke-o-ma.	
Lo-mi-es-ti-wa,	Imprisoned at hard labor for from one to three years.
Quo-ya-ho-es-ni-wa,	
Ta-lash-wong-e-ni-wa,	
Ta-lash-mong-e-wa,	
Kooch-ven-ti-wa,	
Ta-lang-ai-ni-wa,	
Na-qua-lets-ti-wa,	
Ma-sa-hong-ie,	
Na-qua-wey-ma,	
Jas-wis,	Arrested, but not removed to the prison on account of his infirmity.
SHIMOPOVIS.	
Gosh-hong-wa,	Imprisoned at hard labor for from one to three years.
Pa-cush-ia, alias Pa-la-wis-si-o-ma,	
Lo-ma-wi-na,	
O-ma-na-qua (Se-cia-emp-ti-wa),	
Bo-shi-ma (Lo-lo-ma-i-o-ma)	
Yo-yo-wy-ti-wa.	

Seventy-three others (names not furnished the Office) were put at hard labor on the reservation roads for ninety days.

Eleven were also arrested and confined at Fort Huachuca pending arrangements for their transfer to a nonreservation school. They chose Carlisle and were sent there as soon as arrangements could be made in January, 1907. Their names are as follows:

HOPIS.	SHIMOPOVIS.
Tay-ay-va.	Jos-hong-a-wa or Jos-wy-ti wa.
Kat-ka.	Ho-mi-quap-ti-wa.
Na-hong-a-va.	Homi-es-vi (Joshua).
Kooch-hoi-u-ma.	Te-wan-i-i-ma.
Pon-ya-quap-ti-wa.	Ta-la-emp-ti-wa (Washington).
	Ho-ma-leps-ti-wa (Archie).

After the release and banishment of the two chiefs, Ta-wa-hong-ni-wa and Yu-ke-o-ma, and excluding Jas-wis, and the 11 transferred to Carlisle, 9 Hopis and 6 Shimopovis remained at Fort Huachuca. They have all now been released.

The charges against these Indians are fully set forth in the Commissioner's report for 1906, pages 124 to 131, and for 1907, pages 84 to 91. The Commissioner himself was personally well acquainted with the situation, and this knowledge, together with the reports of

Superintendants Murphy and Lemmon and Supervisor Perry, constitute the "charges." The main offenses were defiance of the Government, internal dissensions and rioting, habitual trouble making, and obstruction of the education of the children. The two chiefs, together with 27 of the most conspicuous mischief-makers, including 12 Shimopovis, were placed under guard and taken to Keams Canon. There their cases were individually considered by the supervisor, Superintendent Lemmon, and the military authorities. There were no court proceedings.

Of the San Juan group 10 Indians were arrested in the fall of 1907 by the troops and brought to Fort Wingate to be sent to Fort Huachuca Ariz. Their names are as follows:

By-a-lil-le. Polly. Sis-co. Hosteen-et-so, an old man; was released at Wingate. By-a-lil-le-be-tah, sr. At-city. Bis-cla-e. Tha-el-chee-nah-ki-be-ga. Cliz-e-slon-be-ga. Mele-yon.	All at hard labor.

One of these, named Nick Lee (presumably the English name of Hosteen-et-so, but the record does not state), was released and sent home before reaching Fort Huachuca. Another, Mele-yon, has since been released and sent to the southern part of the Navajo Indian Reservation, under the jurisdiction of the superintendent of the Navajo Agency. Eight, as checked on the above list, are now imprisoned at Fort Huachuca.

The charges, made by Superintendent Shelton and Special Agent Connell, included general lawlessness and hostility toward the Government, intimidation of other Indians who were trying to work, rape, depredations on property, and specific threats to kill Superintendent Shelton, of the San Juan Indian School, and one of his farmers.

These Indians were adjudged guilty by the Office and the Department and are to be confined for an indefinite period at hard labor. There were no court proceedings. They are to be released whenever it may be deemed wise by the War Department to do so. Each case will be considered on its own merits, and in accordance with the conduct of the prisoner during confinement and his promise of good behavior after his return home.

As will be seen from the above report, the Indians therein referred to were arrested because they were disturbing the peace of the communities, and the action of this Department and the War Department in dealing with such cases is in accordance with long-established usage and has been shown to be the only effective method of suppressing lawlessness and the commission of acts of violence by Indians of the character reported upon.

Respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The PRESIDENT OF THE SENATE.

SAN JUAN SCHOOL,
Shiprock, N. Mex., March 29, 1907.

SIR: I have the honor to report to your Office that there is a possibility of serious trouble arising on a certain part of this reservation.

There is a settlement of Indians, some 40 miles northwest of this agency on the south side of the San Juan River in Utah, who are under the leadership and influence of an Indian by the name of By-a-lil-le. This man's influence has been bad all along, but I and the farmer, who is located in that country, have hoped to be able to overcome his influence and to gain his confidence and to get him to exert his energies for the good, but so far have been unable to do this.

Mr. James M. Holley, the farmer located at Aneth, Utah, is a conservative, level-headed man, and he has the confidence and respect of all of the better class of Indians, and until recently he has been able to get along fairly well with this man By-a-lil-le and his clan.

We have discouraged the Indians from selling their breeding sheep to unscrupulous traders and have advised them to hold their young she sheep and build up their flocks, and when they had a surplus of sheep to sell they should sell their old ewes and wethers. The Indians on all other parts of the reservation and the better class of Indians in this section have appreciated this advice and have profited by it.

This man By-a-lil-le became very angry because the farmer advised the Indians in this matter; he and his followers went to the trader, who lives off the reservation and in Colorado, and this trader advised them to do as they pleased; that this was a free country, and that neither the Government nor the Government's agents had anything to do with them or their sheep. The Indians claim that the trader told them that Mr. Holley (the additional farmer) nor I had any communication with Washington, and that our letters and reports did not get any farther than Durango. In this, of course, the trader is to blame, as the Indians are very ignorant and are glad to take advantage of anything that he might say that would increase their discontentedness.

We have endeavored to break up a number of the most vicious of the Indian customs—that of rape, which has been very common on this reservation; the custom of a man taking a widow for a wife who has one or more young daughters, and as they become 12 or 13 years old taking them for a second or third wife; selling their girls, for horses and sheep, to old men for their second and third wives. In all these matters we have been very cautious and have tried to explain clearly where these things were wrong, and, with the exception of the most ignorant and backward Indians in these isolated portions of the reservation, we have been able to overcome a great many of these evils. The Indians in the settlement referred to, another settlement south of Bluff City, Utah, and another in the Black Mountain section refused to take any advice or to make any change in their customs. They are now finding fault with the Indians who are trying to improve their conditions, and by threats and intimidation are trying to enlist their support in defying the Government or any of its influences. They have purchased arms and ammunition and are threatening to kill the farmer, myself, the policemen, or anyone else that interferes with them in any way.

These Indians heard a few days ago that some of the head men from other sections were to be at the farmer's station to solicit children for the school; they immediately armed themselves heavily and went to the farmer's station, expecting to have a fight, and said they would all fight before they would let any of their children go to school. Up to that time no one had canvassed their section for children and had said nothing to them about school. In the settlement near the farmer's place, 14 children were ready to come to this school when it was open for pupils, and through the influence of By-a-lil-le and his followers all but 4 of these children left the settlement before the time set to start for the school and did not come. One of my policemen was in this section and heard that these Indians were in an ugly mood, and he went to their camp and tried to reason with them; he told them that they were opposing the best friend they had; that the Government was protecting their interests, and that they should not rebel without good cause. The policeman says that instead of listening to his advice, that they treated him very disrespectfully and that they became very angry and told him that they did not want anything to do with the Government; that they were going to do as they pleased. In order to avoid any serious clash with these Indians, I sent for one of the most influential Indians on the reservation, a man known as the Sand Painter, and he has heretofore had the confidence of the Indians here referred to, and I had a long talk with him and explained to him the foolishness of these people in taking the stand they have and I requested him to go down and try and explain to them that they were wrong. He went and talked and plead with them for one day and night without results; they told him they were not

taking the advice of anyone; that the "agent, the head men, and the Government had better not stick their noses in." He states that there are 15 bad men in this settlement and that they had 50 more who would stand by them. The Sand Painter advised me not to go down to that place, saying that if I did I would certainly be killed. These troublesome Indians belong to the same clan as those who had trouble with Superintendent Perry at Chin Lee.

I have talked with Indians in this section and those living in the Carriso Mountains, and they all said that the Government should take a hold of this man By-a-lil-le and his followers and teach them that they are living in a law-abiding country. Some of the better class of Indians living near By-a-lil-le's settlement have requested the farmer to secure arms for them, saying that they would deal with these Indians if the Government would furnish them with arms and ammunition. I merely mention this to show the feeling that exists between the two classes, the progressive and the unprogressive. I have always felt, since taking charge of this reservation, that something more than kind talk and persuasion would have to be used with the people in the section referred to, and I have tried in every way possible to avoid a clash or any thing that would annoy your Office or cause friction of any kind.

This man By-a-lil-le is a medicine man and is known as the "Rainmaker;" the Indians believe that he can make it rain at will, and he has been making them believe that he is keeping rain from coming because so many of them are listening to the Government's advice and trying to pattern after the white people. When these arguments fail to have the desired effect, he threatens to kill those who oppose him and his followers, and by threats and coercion he has enlisted a number on his side who are not in sympathy with his movements.

In asking the policeman and other Indians what fault he had to find with me and the Government, he stated that I advised the Indians to not sell their sheep; that I had scolded them for raping young girls; that I had objected to their selling young girls to old men for wives; that I would not allow men to marry two or three wives. He is particularly angry because I had arrested and brought to the agency a demented Piute Indian.

In a personal communication addressed to you at Santa Fe, N. Mex., on the 5th of last June, I referred to a large number of Indians, mostly renegade Navajos, Utes, and Piutes, located between the San Juan and Colorado rivers, all the way from Bluff City, Utah, to the junction of these rivers; that these Indians, together with a large number of Navajo Indians north of the Moqui Reservation line, and even east of the section named, get but very little attention from any source and are practically running wild and without restraint.

While these Indians that are causing the disturbance now are not the identical Indians referred to in my letter, they belong to the same clan or class of Indians, and are all in sympathy with each other and are strictly opposed to any interference from any source.

It would be unwise and foolish for me to send my police force, numbering eight men, into this section to undertake to straighten these people out. Even if they had the nerve and courage to go, they would be shot to pieces before they would have time to make any showing.

The Piutes referred to have never had an agent and have never been under any supervision; they live on the western border of this reservation, and will join with the lower classes of Navajos in committing depredations and in making any trouble that is started.

I am going to start to-morrow morning on a trip through this section referred to, in order to investigate thoroughly the conditions there and, if possible, adjust matters to the satisfaction of all concerned.

Special Agent Connell arrived here yesterday, and I have requested him to take this trip with me, and he has consented to do so. I make this report before starting in order to inform your Office of the situation as I see it from here; that in case any trouble arises on the trip, you may know that I did not go into it hastily and rashly.

While Inspector McLaughlin was here on special business Farmer Holley was at the school and mentioned something of the trouble that was brewing at that time; but the inspector, being on special business, had not the time to go to the vicinity and did not get the details of this matter. I was hoping at the same time to be able to overcome the trouble that then existed, but which, I am sorry to say, is no better and is even getting worse, and I regret to say that some steps must be taken without delay to settle it.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

SAN JUAN SCHOOL,
Shiprock, N. Mex., April 6, 1907.

SIR: I have the honor to request your Office to refer to Superintendent Shelton's letter of March 29, 1907, in which he states that By-lil-le and his band are hostile, threatening to kill him and his farmer, etc.

Upon careful inquiry among many of the different bands of Indians and a trip through this section, I found what Superintendent Shelton says is true.

This man By-lil-le has, with a heavily armed band of over 30 bucks, gone to the Indians in the outlying districts and threatened to exterminate them if they sent any children to school or took up the white man's ways; the more ignorant he has threatened with his power as a big medicine man to bring all kinds of disaster upon them. He repeatedly told the Indians in public talks that he would kill Superintendent Shelton or any other white man that dared to approach him, and that if the soldiers came he would have the lightning strike them dead.

Superintendent Shelton and I decided that the best way to keep By-lil-le's power from spreading was to call his bluff, so we went, without any police or escort, right down into his stronghold and met him and his band of 36 warriors. Superintendent Shelton was most tactful in his talk, showing the Indians that he was their friend; fortunately Mr. Shelton and the agency doctor had at one time cured the mother of one of By-lil-le's warriors, who had a boil on her neck, and who was under By-lil-le's treatment until she got maggots into her head and face and was a terrible sight even to the Indians. This Indian was the first to take our side, and Shelton, recognizing another Indian whom he had helped, got them over and called all the Indians' attention to the improvements on the roads, etc., etc., that he had made. Working along this line we got the band divided, and finally By-lil-le had only three left on his side, and then I went after By-lil-le rough; told him he was sick in the head and proved it to the other Indians. The sweat just rolled off his face, and I thought possibly he would try a gun play, but he stood the truth as long as he could and then he went off with only two friends following him and the rest of the Indians giving him the laugh; then we had a horse race, and the Indians left with a different feeling toward the Government and the Government's officials.

By-lil-le's power is gone for the present at least, for Indians despise a leader who does not make his threats good;, but By-lil-le and his type are a dangerous lot, if they can get a following. He is on the edge of the worst district of broncho Indians in the Southwest. There is a bunch of between 600 and 800 Indians in the wilds of the Black Mountains, that are the original band and its offspring that the soldiers could not capture the time they took the Navahos to Fort Sumner. These Indians never have and say they never will recognize any Government control. Agent Hazelet sent word that he wanted to go up into the Black Mountains and have a friendly council with them. He was met on the edge of their country by warriors and told to go back, that if he came further he would be ambushed, and he knew them well enough to realize they would do it, so he gave up his trip. The progressive friendly Navahos are afraid to go into this section.

There are about 100 Piutes and renegades back in the breaks of the San Juan and Colorado rivers. There are probably another hundred renegade Utes in that section, and all the Navahos who commit crimes or who can not endure the restraints of civilization go back and join these outlaws.

Probably as long as the Government is slack with these Indians and it does not interfere with their raping, stealing, and depredations upon the friendly Indians there will be no open hostilities. The good Navajos and the Mormons are the ones who are suffering from these renegades and outlaws. These Indians live off of depredations committed on the Mormons' and better Indians' stock, who are afraid to resist them. Even in the Mormon towns they take their insults. As an illustration, I saw, in the town of Bluff, in the cooperative Mormon trading store, twelve Piutes come into the store; one deliberately shot an arrow down into the middle of the floor; all had pistols, belts, and cartridges upon them, and rifles on their saddles. One fellow amused the others by hacking the store counter with a big knife and the storekeeper was afraid to object. The Mormons say that it is easier to feed them and tolerate them than to fight them. I do not care about the Mormons, but the trouble is that this kind of a thing will grow; renegades and lawless Indians all over the Southwest will drift into such a section and join the outlaws.

The country is ideal for renegade Indians to operate in. It is the roughest country the devil ever made; all broken up by fissures, canyons, and precipices; a country honeycombed with caves in whose depths there are often living springs; a country where ledges protrude over the trails, giving the followed a chance to exterminate their followers. Why, a dozen cow punchers, with chuck enough cached out and cartridges enough, could whip the whole United States Army down there, and these renegades are not very slow in a fight themselves.

The Navajos, Piutes, and Apaches are of a different nature than the Pueblos and such Indians as the Moquis. When a Chihuahua bull gets stubborn and will not come the way you want him to, look out, for if you are not on a quick cow pony both you and the pony are liable to come to sudden grief; but, if a shorthorn bull gets stubborn he sulks and stands his ground. There is just as much difference between the above breeds of Indians as between the above breeds of cattle. The Navajo or Apache is a fighter; the Moqui a good-natured, polite, but stubborn burro. I merely mention this because you have got to fight one from the start and keep fighting to the finish to get him where he should be, where you can not arouse the other to fight; he will just balk until you throw him and drag him to where he should be.

If these renegades could be disarmed and their children compelled to go to school, it would be no more than what should be done for their children, the settlers, and the neighboring good Indians.

It would not be possible to put all of their children in school at once, as the Government has not the school capacity; but all between 10 and 15 years old should be sent before they become too old to learn. Of course they would hide the children and their arms if the soldiers should round them up, but several campaigns would get most of them. Also the head medicine men and the most lawless leaders should be sent off for several years where they would have to learn what work was.

I realize how difficult it would be for the Office to carry out such a recommendation.

First. A lot of eastern people would commence to kick about the noble red men being abused. I wonder why the East did not appreciate it at the time of the Chicago anarchist trouble; the fact that these Indians did not get up a white man's protective society and send a representative, as an agent of the white man's rights association, on to butt into the eastern people's business. When will the East get over the erroneous idea that all red men are noble? There are red liars, red tramps, red thieves, red hypocrites, and red anarchists, just the same as white ones; but that does not mean that there are not just as big a per cent of good Indians as there are white people; in fact, not near as large a per cent of white people would be law-abiding where a city under as little restraint of law and punishment for disobedience of law as are these southwestern Indians. A good old New Englander will get righteously indignant because a bad Indian is taken away from his reservation where he is spoiling other Indians, and then go right out and pick a rotten apple out of a barrel to keep it from spoiling the rest. A conscientious New Yorker will talk compulsory education for New York and at the same time think the Moqui is ill-treated because the Government is trying to give the Moqui child a white child's show. A Chicagoan is in for hanging the anarchists, but he would be wrathy were an Indian Commissioner to suggest the Indian anarchist; the murderer of not hardy police, but helpless sick women and children; the Indian medicine man should be deported. The bad Indian is given more than a white man's show, and consequently the good Indian not a white man's show. The medicine man and the lawless Indians who live off the superstitions of the ignorant or the helplessness of the unprotected, should be deported from all these southwestern reservations and put where they would have to work.

This would cause much campaigning of the Army. Army officers would naturally try to side step this kind of work, for Indian campaigns are no longer attractive to the soldier; there is not the chance of a glorious fight against odds, by which they would gain fame and promotion. It is now more of a long drawn out campaign of irksome police, rather than soldier duty; not a battle, but an arrest. Yet the War Department should do this kind of work, for it would not pay the Interior Department to keep up sufficient police for such work. Besides the Indians were taught to fear the soldier, by such generals as Crook, and that fear enables the Army to do such work much easier than civilians or Indian police.

I would respectfully recommend that as soon as practicable troops be ordered to disarm all Indians who have guns without license to have same; that the worst medicine men be deported, and that children of renegade Indians a number not to exceed the capacity of Government schools, in a climate similar to the climate in which the children are accustomed, be sent to school, preference being given to children between 10 and 16 years old, or 14-year-old limit, if girls.

Very respectfully,

R. S. CONNELL,
Special Indian Agent.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

SAN JUAN SCHOOL,
Shiprock, N. Mex., September 18, 1907.

SIR: I have the honor to refer you to my report of March 29, in which I said that there was a probability of serious trouble arising on a certain part of this reservation.

I stated that there was a settlement of Indians some 40 miles northwest of this agency on the south side of the San Juan River, in Utah, who are under the leadership and influence of an Indian by the name of By-a-lil-le. I referred to this man stirring up trouble and causing discontent among other Indians, and stated that they had purchased arms and ammunition, and were threatening to kill the farmer, myself, and the policeman, or anyone else that tried to interfere with them in any way. I stated that I was going to start on a trip to the section referred to in order to investigate thoroughly the conditions there, and if possible to adjust matters to the satisfaction of all concerned; that Special Agent Connell was here, and had consented to take this trip with me. We made the trip, and on our return the special agent made a report to your office relative to this matter. I would request that you read his report in connection with this communication.

I have delayed reporting on this trip in order to see what might develop after our visit. After some difficulty we had an interview with By-a-lil-le and his followers which was at that time fairly satisfactory. As I expected, the Indians met us without arms and were friendly in their conversation; at the same time, with my limited knowledge of the Indian language, I could tell that the more conservative men in the crowd were urging By-a-lil-le and his lieutenants to say nothing that would lead me to believe that they were not friendly. Before the meeting was over By-a-lil-le with a few others left unceremoniously, while the majority of the crowd remained and participated in a horse race. I felt at the time of leaving this section that my talk with the Indians had not had the desired effect.

Soon after my return home a number of the better class of Indians from different parts of the reservation informed me that By-a-lil-le was still stirring up and causing all of the discontent possible. I induced a number of the most influential Indians to go to By-a-lil-le's home and have a friendly talk with him and try to induce him to give up the idea of being an outlaw and leader of bad men. This conference was unsuccessful. The visiting Indians claim that it was some time before By-a-lil-le could be induced to come out of the brush and talk with them. He proposed that they have a fight, saying that he was mad and so were his friends. He and the other Indians were heavily armed. The visitors showed them that they were not armed and assured them that they were not there to fight, that they had come as friends and wanted to have a friendly talk and adjust any differences that might exist between them and others. Finally, when By-a-lil-le consented to go to his house to talk to the visitors his followers remained on the outside and in the brush discharging firearms, which the visitors claim was to intimidate them.

The Indians attempting to make peace as well as the other progressive Indians insist that there is no use in trying in a mild way to get these Indians to behave themselves. They have repeatedly requested me to ask you to send soldiers into that locality to show these renegades that the United States Government is able and willing to protect the Indians who are trying to make an honest living and trying to be self-supporting and law-abiding citizens.

It has been my intention and I have exerted my best efforts to prevent any annoyance to you or to your office with this matter, as well as other trouble on the reservation, but circumstances are such that I fear to wait longer will result in serious trouble.

Some two weeks ago a prominent Indian named Do-hi-e died after a short illness; before dying he told his friends that By-a-lil-le was a witch and had killed him by shooting hidden darts into his body. Now Do-hi-e's friends insist that By-a-lil-le must be killed or taken out of the country. I have advised them that to kill him would only get them into trouble, and requested them to take no action until I could lay the matter before you.

I will inclose herewith a communication from M. R. Butler, an Indian trader, who lives 8 miles from By-a-lil-le's camp. Mr. Butler's letter explains itself. This has been the attitude of these Indians right along.

The additional farmer located at Aneth, Utah, has informed me that this man has refused to have his sheep dipped, and the farmer says that it is impossible to induce him to dip them. He is the only Indian on the reservation owning sheep that has refused to have them dipped. I simply mention the matter of sheep dipping to show you his attitude toward progress.

He has always exerted his energy and influence for bad and has caused trouble in his community since he was old enough. Years ago he got so mean that the Indians tied him up and was going to kill him, when he promised to leave the country and never return, but he did return and has made trouble ever since. The time has come when steps must be taken to relieve this reservation of such influence.

It is impossible for me to get a police force together that would go down and arrest this man, and if I had him arrested I would not be able to hold him long enough to have the desired effect. I have not been able to induce an Indian west of the Four

Corners to take a position as policeman on account of their fear of this Indian and his influence.

I would respectfully recommend that you cause at least two troops of cavalry to be sent to this part of the reservation and that By-a-lil-le be arrested and confined long enough to show him and other such Indians that the time for bad men in this country is past. If this is deemed unwise, I would recommend that the troops be stationed in the vicinity of By-a-lil-le's camp long enough to give the Indian police confidence in themselves and show them that they have the protection of the Government in doing their duty. Either action will meet the approval of the Indians as a whole, but in my opinion By-a-lil-le should be removed from the reservation, and I am sure the Indians would prefer this.

It would be an easy matter to move troops from Fort Wingate to Aneth, Utah. The roads across the reservation are excellent. The distance is about 150 miles. Hay can be delivered at Aneth for $15 per ton or less, and grain for $2.25 per hundred or less. The appearance of troops along the lower San Juan River would have a good effect on the Indians living farther west on the reservation. While there has been no trouble in that section to speak of, there has been an undercurrent of uneasiness from time to time that suggests trouble.

I trust that you will not gather from this communication that this reservation is in an uproar. It was never in better shape. The Indians have raised good crops this year, their stock are all fat, blankets and wool have brought good prices, and, aside from those referred to in this letter, they are happy and contented.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

ANETH, UTAH, *September 14, 1907.*

DEAR SIR: You requested me when you was down here to let you know if there was any stir with the Indians, or to let Mr. Holley know, as he is up your way. I will send a note to you. I don't know just what it is, but there is quite a stir in the Bylilley gang again. Bylilley was here yesterday and done quite a lot of talk. Said the Indians were all talking guns and that he was mad, and his Indians were all wanting guns and cartridges; and all the Indians around yesterday evening and this morning are talking about something they don't seem to want me to know, but I catch the word Bylilley quite often as I pass where they are. It may just be amongst the Indians, but thought as I had a chance would let you know.

Yours, very truly,

R. M. BUTLER.

W. T. SHELTON,
Shiprock, N. Mex.

DEPARTMENT OF THE INTERIOR,
Washington, October 12, 1907.

SIR: I inclose copies of two letters, dated March 29 and September 18, 1907, respectively, addressed to the Commissioner of Indian Affairs by the superintendent of the San Juan Indian School, Ariz., and a copy of one dated April 6 last, addressed to the Commissioner by R. S. Connell, special Indian agent, in regard to the hostility of a band of Indians occupying the northern part of the Navajo Indian Reservation situated in Arizona, New Mexico, and Utah.

They are under the leadership and influence of an Indian named By-a-lil-le, who, it appears, is constantly stirring up trouble and causing discontent among other Indians, and have purchased arms and ammunition and threatened to kill the policemen, the farmer, the superintendent of the San Juan School, and anyone else who may try to interfere with them.

The peaceable and progressive Indians insist that there is no use in trying in a mild way to get these renegades to behave themselves, and ask that soldiers be sent into that locality to show the latter that the United States Government is able and willing to protect the people who are trying to make an honest living and become self-supporting and law-abiding citizens.

The superintendent says that it is impossible for him to get a police force together to put down and arrest this man; and that if he had him arrested he would not be able to hold him long enough to have the desired effect.

He recommends that at least two troops of cavalry be sent to the northern part of the reservation and that By-a-lil-le be arrested and confined long enough to show him and other such Indians that the time for bad men in that country is past; or, if this is deemed unwise, that the troops be stationed in the vicinity of his (By-a-lil-le's) camp long enough to give the Indian police confidence in themselves and show them that they have the protection of the Government in doing their duty. He expresses the opinion that either action will meet the approval of the Indians as a whole.

According to his letter of September 18, it would be an easy matter to move troops from Fort Wingate, N. Mex., to Aneth, Utah, the roads of the reservation being excellent and the distance about 150 miles. Hay can be delivered at Aneth for $15 per ton or less, and grain for $2.25 per hundred or less. He thinks that the appearance of the troops along the lower San Juan River would have a good effect on the Indians living farther west on the reservation, and says that while there has been no trouble in that section to speak of, there has been an undercurrent of uneasiness from time to time.

This matter is brought to your attention for an expression of your views as to the feasibility of stationing temporarily two troops of cavalry at Aneth, Utah, which appears to be accessible, and where hay and grain can be purchased at reasonable prices. This place is in the vicinity of this hostile band of Indians, and the presence of the soldiers would, in my judgment, be an object lesson for them and inspire the restless spirits among them with a sense of awe.

Unless an adequate show of military force is made somewhere within a reasonable distance of these lawless Indians, we may later confront a difficult problem, and one that may involve bloodshed and other disastrous consequences before it is solved. There is evidently some alarm on the part of the superintendent and his force, which it seems is not altogether ill-founded, and it has occurred to me that it might be good policy to have a military force encamped for a time at or near Aneth (Utah), or somewhere in the neighborhood where the sight of the soldiers would have a restraining effect upon the Indians and force them to conclude that it would be useless to continue to resist the Government in its efforts to teach them the ways of civilization and improve their condition.

I therefore present the subject for your consideration and views as to the detailing of two troops of cavalry for the purposes indicated.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The SECRETARY OF WAR.

WAR DEPARTMENT,
Washington, October 15, 1907.

SIR: I have the honor to acknowledge receipt of your letter of the 12th instant, inclosing copies of two letters, dated March 29 and September 18, 1907, respectively, addressed to the Commissioner of Indian Affairs by the superintendent of the San Juan Indian School, Ariz., and a copy of one dated April 6, last, addressed to the Commissioner by R. S. Connell, special Indian agent, in regard to the hostility of a band of Indians occupying the northern part of the Navajo Indian Reservation, situated in Arizona, New Mexico, and Utah, and in response thereto to hand you herewith for your information copy of a letter of instructions of this date to the commanding general, Department of the Colorado, Denver, Colo., on the subject.

Very respectfully,

F. C. AINSWORTH,
The Adjutant-General, Acting Secretary of War.

The SECRETARY OF THE INTERIOR.

WAR DEPARTMENT,
THE ADJUTANT-GENERAL'S OFFICE,
Washington, October 15, 1907.

SIR: Acting upon reports received by him from his subordinates on the Navajo Indian Reservation in northern Arizona and Utah, the Secretary of the Interior has requested the presence of troops on the San Juan River, in southern Utah, in the vicinity of Aneth. It has been stated that there are some unruly Indians, under a leader called By-a-lil-le, who have caused uneasiness among the well-disposed Indians, as well as among the whites, by threats and the assumption of a bellicose attitude.

The acting Secretary of War, therefore, directs that you cause two troops of cavalry from Fort Wingate, N. Mex., under an officer of experience and good judgment, to march northward to the region indicated, ostensibly upon a practice march. The object of the march is to show the ill-disposed Indians that there are troops within call should they, for any cause, resort to violence. While no serious trouble is expected, the force should be well supplied with ball cartridges and be so provided with baggage as to enable them to prolong the stay in the vicinity of Aneth should that become necessary. The officer in command of the troops, on arriving in that neighborhood, should inquire into conditions and inform you promptly of the situation and as to whether or not, in his judgment, any prolonged stay of the troops is necessary. Upon receipt of this report, please inform the Department of its substance, adding your own recommendations upon this point of retaining troops longer in the region named.

The movement of troops directed herein should be begun at once.

Very respectfully,

HENRY P. MCCAIN,
Adjutant-General.

The COMMANDING GENERAL, DEPARTMENT OF THE COLORADO,
Denver, Colorado.

WAR DEPARTMENT,
Washington, October 23, 1907.

SIR: In further response to your letter of the 12th instant, suggesting the sending of troops to the vicinity of Aneth, Utah, owing to the hostile attitude of certain Indians occupying the northern part of the Navajo Indian Reservation, I have the honor to hand you herewith for your information a copy of a telegram, dated the 22d instant, from the commanding general, Department of the Colorado, on the subject.

Very respectfully,

ROBERT SHAW OLIVER,
Acting Secretary of War.

The SECRETARY OF THE INTERIOR.

DENVER, COLO., *October 22, 1907.*

Troops I and K, Fifth Cavalry, 4 officers and 74 men, 1 officer and 2 men Medical Department, 3 Indian scouts, Capt. H. O. Willard, commanding, left Fort Wingate 8 a. m., this date, for Aneth, Utah.

HIRST,
Chief of Staff, Absence Department Commander.

The ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

IN THE FIELD, SHIPROCK, N. MEX., *October 30, 1907.*

SIR: Pursuant to instructions from your office, I have the honor to report the following as having occurred since the date of my letter to you of October 26:

Taking six days' rations and leaving all baggage here possible, my command left Shiprock the morning of October 27, for Four Corners, Utah, en route to Aneth, Utah. I estimate Four Corners as being 32 miles from here by wagon road. Superintendent Shelton, Indian agent of the northern half of the Navahos accompanied the command to Four Corners, together with all the Indian police and prominent friendly Indians he could muster. The superintendent arrived at Four Corners about an hour before myself, and upon arrival there found Sis-co, one of By-lil-le's men, there at the trading post and held him there until my arrival, telling him his interpreter was coming in a short time and he wanted to talk to him, Sisco—which statement was correct, inasmuch as the interpreter was with my orderly and myself, we having moved ahead of the column several miles. Upon arrival at Four Corners I placed Sis-co under arrest, and also detained all Indians entering Four Corners after our arrival for fear of them carrying information to By-lil-le of the arrival of troops at Four Corners, it having been decided best not to inform By-lil-le at all of the approach of the troops. The Indians detained were held under guard until 11 a. m. October 28, when they were permitted to go (in accordance with my orders), with the exception of Sis-co, who was held a prisoner. Superintendent Shelton left Four Corners after his lunch and with his interpreter proceeded to Aneth, Utah, about 20 miles distant, with the purpose of trying to locate By-lil-le and of sending me word by Indian runner. The police and one good inter-

preter remained with my command. The troops arrived at Four Corners about 3.30 p. m., and, after some conversation with Mr. Charles Fritz, Indian trader at Four Corners, relative to By-lil-le and Polly, his right-hand man, and their craftiness and cunning, as well as a careful discussion of the situation with my officers, it was decided that the only opportunity afforded of capturing By-lil-le and his men, as well as to avoid any serious conflict, lay in making a night march upon him and, trusting that he had no information whatsoever of the command, surprise and capture him and his immediate followers about daybreak the next morning.

Superintendent Shelton had informed me that he would reach Aneth about dark, and if he could learn the whereabouts of By-lil-le and his men, he would inform me by runner at once, and this man should reach my camp at Four Corners by midnight. If, however, I heard nothing, it would signify that I was to follow on, as there would be nothing to report and I would have to be guided by circumstances. Having ascertained from the prominent friendly Indians who arrived at Four Corners subsequently that By-lil-le, Polly, and their men were on the south side of the San Juan River near MoElmo Canyon, about 4 miles east of Aneth, I determined to wait until 1.30 next morning, and if I heard nothing in the meantime, make a night march and surprise and capture By-lil-le; the moon being about half full at this time, there would be ample light for the march, and had there been no light I would have followed the same course, as there was no alternative. Accordingly, for the first time I informed the men the object of the expedition, namely, to capture By-lil-le, Polly, and their worst men. All preparations were made for this night march before dark, saddles stripped and each man supplied with 100 rounds of rifle ball cartridges and 20 rounds revolver ball cartridges, and the men were informed when awakened to saddle and mount without noise. All calls were of course dispensed with after arrival at Four Corners. About 10 p. m. I notified the Indian police and friendly Indians of my intentions, but for fear some one of them might send information of the plan, after notifying them of my intentions, I put them all under guard until we were ready to move, when they were required to saddle their ponies and report to me in person. The prisoner Sis-co was left at Four Corners under the guard of a sergeant and three privates (also one sick private was left at Four Corners, at the direction of the surgeon). The wagon master and the chief packer were instructed to break camp next morning with the detail left in charge of the prisoner and the wagon-train guard, and to proceed to Aneth and await the command there unless otherwise informed in the meantime. So far as could be learned the presence of the troops was wholly unknown; Mr. Fritz, who speaks Navajo fluently and is the trader at the Four Corners, said he had heard nothing of soldiers being in the country; that the Indians knew nothing of their presence, or he would have heard about it, and that it was a complete surprise to him when the command marched into Four Corners that afternoon. Hence it was quite reasonable to suppose that with the precautions taken, By-lil-le and his men could be taken without trouble. It developed subsequently that not an Indian as close as a mile and a half down the river knew of the presence of the troops at Four Corners until we had passed in the night and accomplished our purpose. At 1.30 the next morning the command was quietly awakened, saddled their horses, and left camp by 2.30 a. m., without any noise or confusion, under the guidance of the Indian police, friendly Indians, and the interpreter, and proceeded rapidly down the valley of the San Juan River for about 14 miles from the camp at Four Corners. The Indian police and the Indians were apprehensive that By-lil-le had learned of the troops, and would ambush them near Butler's trading post, about 10 miles down the river, this point being near Polly's hogan. However, I reassured them and told them I anticipated no such action, as I did not believe By-lil-le knew anything about it, and to push on as rapidly as possible. About 14 miles down the river the command forded the San Juan to the south side, and here encountered the first Indian settlement of any consequence since leaving Four Corners, this ford being about 3 miles from By-lil-le's camp.

It was approaching dawn, and after fording the river and striking this settlement the troops were moved at a rapid gait through this village and down the south side of the river in the direction of By-lil-le's camp. About a half mile from the hogan I was informed by the Indian police of the nearness of our destination and gave the necessary orders for surrounding the hogan upon arrival. About 5.45 a. m. we reached the hogan, surrounded it, and in less time than it can be told had dismounted and rushed into the hogan, where By-lil-le, Polly, and another Indian were found, just springing to their feet from sleep.

The surprise was as complete evidently as possible, as they themselves afterwards said they did not dream there were any soldiers within a hundred miles of the camp. There were also several squaws, a child or so, and a sick man present. The men poured into the hogan without ceremony and seized By-lil-le, Polly, and the other

Indians, all of the officers being present with the exception of Captain Heard, who had remained outside. The Indians strenuously resisted arrest and capture to such a degree that it was necessary to use considerable force before they were overcome, secured, and handcuffed. Meantime there were other hogans in the vicinity, and Indians began coming out and walking over to discover the cause of the disturbance and were seized and arrested by my men as soon as they arrived, in this way several bad Indians being secured. All resisted arrest when they discovered the soldiers and struggled until sufficient force was used to overcome them. Seeing that there were more hogans in the neighborhood than I had been informed of, I directed the Indian police, through the interpreter, to proceed at once and arrest all of them, and immediately afterwards sent Troop I, Fifth Cavalry, under command of First Lieutenant Warren, to assist in arresting these Indians. In this connection attention is invited to the reports of Lieutenant Warren, Lieutenant Stewart, and Lieutenant Hanson of their movements after receiving and carrying out these orders. Within a very short time I heard firing, at first as if fired from small-caliber arms, and this was then followed by heavier firing close by until I distinguished the report of our own rifles. I then sent Lieutenant Hanson, with a detachment of Troop K, Fifth Cavalry, to the assistance of Lieutenant Warren, retaining a small detachment myself as a guard over the prisoners, and requested Captain Heard, the assistant surgeon, to ascertain the cause of the firing and to report the same to me. Captain Heard had no opportunity to do so, as the entire affair lasted but a few minutes longer after he received this order. Attention is invited to Captain Heard's report, hereto appended. I then had the prisoners assembled on the road and, with the detachment still remaining, started off in the direction of the firing, northwest, I should judge, and in the direction of Aneth, and had only proceeded when I heard a cry for help, and, recognizing the voice of my first sergeant, I designated several men to follow and galloped over in the direction of the sound and found the sergeant's horse had been shot and had succeeded in getting away from him before he could get his rifle, while meantime an Indian who had followed us down the river a mile or so was firing at the sergeant at close range, but too far away to be reached by the sergeant's revolver. One of my sergeants shot this Indian through the head about the time I reached the first sergeant, and I then recalled those men in the immediate vicinity, returned to the prisoners, several hundred yards away, and had the assembly sounded and at the same time marched the prisoners and detachment to a point about a half mile distant west of the scene of the capture, on the banks of the San Juan River, where the assembly was sounded again, and after the arrival of all men the rolls were called and all were found to be present or accounted for, none of my men having been injured, but that several Indians were reported as having been killed. It appeared that on sight of the Indian police, although warned to surrender and not to fire, the followers of By-lil-le had paid no attention to these instructions, but had deliberately opened fire on the police, apparently not seeing the soldiers coming.

This at once drew fire from both the police and my men, and a skirmish which lasted from fifteen to twenty minutes, after which time all male hostiles in the vicinity had either escaped through the heavy underbrush or had been killed or captured. The command having been assembled, proceeded about 6.30 a. m. with the prisoners and Indian police to Aneth, Utah, fording the San Juan to the north side, passing By-lil-le's hogans on the north side, and went into camp at Aneth about an hour later. A short distance from camp I met Superintendent Shelton coming to meet us (I had already informed him briefly of the circumstances by an Indian policeman sent in advance, and he had heard the firing at Aneth). As quickly as possible I explained what had happened since last I saw him. Superintendent Shelton was very pleased that we had captured the bad Indians, particularly By-lil-le and Polly, without loss to the squadron. He had been apprehensive of serious trouble with them had they received any intimation of our approach, and from the resistance and hostile reception we encountered when they were surprised I am now of the opinion that there would have been a serious fight had they heard of our advance beforehand.

Soon after arrival in camp it was learned from an Indian who came to the trading post at Aneth that in addition to three Indians being killed in the fight one had been severely wounded by being shot through both legs and had been carried off by the Indians after we had left the scene of the capture. It was also now learned that the hogan where By-lil-le was captured was not his regular hogan on the south side of the river, but a medicine hogan where he was making medicine the night before capture. His own hogan was about three-quarters of a mile farther down the river, and it is to be regretted that this was not known at the time, as we could have undoubtedly captured a number of arms in this hogan, as By-lil-le's men are known to have been armed to the teeth, and only a few days previous By-lil-le himself was seen

with one of the latest improved rifles, 30-30 caliber. However, Lieutenant Stewart, with a small detachment, searched all of the neighboring hogans after we had forded the river, and came into camp an hour or so later and reported he had found no arms. Three old rifles and one Colt's revolver and several knives were taken from the Indians seized as prisoners or killed. Upon arrival at camp near Aneth a log house was utilized for a guardhouse and the prisoners confined there.

Superintendent Shelton and myself had a talk with By-lil-le, Polly, and the other Indian prisoners, when, as could be anticipated, they denied everthing with which they were charged, namely, advising their men to threaten people with death, counseling, advising against the dipping of sheep and the sending of children to school, advising Indians to have several wives and to rape Indian girls, to sell their stock to unscrupulous traders for a song, to bring whisky in from Cortez, to defy the Government and its authority; in short, to do everything that was forbidden by the Government and to oppose every progressive measure instituted by it. They denied these things, while their own followers, notably Sis-co, says they said and did every one of them and more, too. They had the Indians, well disposed, and white people of this section terrorized and in constant fear and dread of surprise and attack. They have repeatedly threatened to kill Superintendent Shelton and his farmer at Aneth, Mr. Holley. By-lil-le denied he was a witch, or could make rain or lightning, or could shoot hidden darts into any Indian; denied that he ever claimed that the white man's bullet could not kill him, but sufficient answer to his denial is to be found in the fact that other Indians say he claimed all of these powers, and he killed Do-he-he with hidden darts; and he has so terrorized Cluh, a prominent Indian of this section and a friend of Do-hi-e, with the threat to kill Clah with hidden darts like Do-hi-e that Clah sent for a sand painter, one of the best in the tribe, to Winslow, Ariz., and paid the latter $700 to break By-lil-le's power over him. Knowing the Indians' wholesome dread of such things and their superstitious ideas, it is not difficult to conceive that By-lil-le exercised more influence over the Indians as a medicine man, who could do them much good, if he chose, or who could kill if they failed to obey him, than in any other capacity. Clah and the friendly Indians along with the command begged Superintednent Shelton to hang By-lil-le and Polly at once, as they said they were bad Indians and medicine men and ought to be killed. This is stated merely to show the fear the well-disposed Indians entertained of them and what their sentiments are concerning By-lil-le and Polly. In the afternoon a short march was made up the river about 6 miles over the same ground covered in the morning and over the scene of the capture and skirmish.

All Indians were gone except several old squaws and some sick Indians. Probably they were in the hills and rocks southwest of the village watching us all of the time. It was intended to try and find the wounded Indian reported, take him prisoner, and have his wounds dressed by the surgeon, but he could not be found; a new spear was found right at the door of the hogan, where we had been told he was staying, and which had been made evidently since the affair in the morning. This is sufficient evidence to show that the intentions of those of By-lil-le's men who escaped in the morning were far from friendly to us. The spear was confiscated and taken along. We marched through the settlement and about 2 miles east on the river from the scene of trouble in the morning and found all hogans deserted. About 2 miles from By-lil-le's hogan we came across some other Indians who do not belong to his following, although he has terrorized them and had such influence over them that they were afraid to antagonize him in any way whatever.

There were a number of Navajos here, and Superintendent Shelton and myself talked to them an hour through an interpreter, explaining the trouble which had occurred, and we assuring them of the intentions of the superintendent and the soldiers. They seemed pleased with By-lil-le's capture and wanted him taken away, and said so long as he was gone they would obey the superintendent and do what he wished, but that they could not do so as long as By-lil-le was there to shoot hidden darts into them and make bad medicine when they refused to obey him. They seemed glad to know that the soldiers were only the enemies of the bad Indians and would do no harm to the friendly ones, as some scoundrel who had escaped in the morning, an Indian by the name of Bo-got-ton, and who belonged to By-lil-le's following, had passed through their camp in the morning after the trouble, headed for the Carriso Mountains, and had told them that the soldiers had been shooting down the Navajos like dogs, and that they had better strike out for the mountains themselves. Naturally they were more or less alarmed, and were glad to find out the facts of the case, and said their hearts felt good after our talk with them, and they would obey Washington thereafter. After this powwow the troops returned to Aneth. Hearing that there was a rumor of Indians gathering and attempting to make a night attack, I detailed a heavy guard the night of the 28th and made preparations to receive them, if necessary, but nothing happened.

The wagon and pack train had arrived late in the afternoon of the 28th from Four Corners, having had an accident in which one wagon turned over several times down the river bank and hurt one of the soldier teamsters, Private Mowen, Troop I, to such an extent that the wagon master, Sergeant Thompson, Troop K, had to send Mowen to Shiprock by an agency wagon which was at Four Corners, having hauled forage to that point for the command. The troops and prisoners left Aneth at 7.30 a. m. the 29th, en route to Four Corners, Utah, arriving there in the afternoon about 3 p. m. without incident.

While at Aneth I conversed with Mr. Heffener, Indian trader there, who has resided a number of years in this locality and who is thoroughly conversant with By-lil-le's and Polly's characteristics and habits, as well as those of their men. He was of the opinion that By-lil-le and Polly were vicious; bad Indians are the worst type; said there were none more cunning, crafty, or more villainous, and that if anything Polly was worse than By-lil-le, as By-lil-le was cute enough to incite other Indians to commit acts of deviltry, whereas Polly would not and had not hesitated to commit them himself. From the looks of these Indians it can be well imagined that such is the case, for although I have grown up in the West, where Indians have been numerous—Sioux, Cheyenne, Arrapahoe, and many other tribes—I do not think I ever saw a more villainous appearing pair than By-lil-le and Polly, with all of their protestations of innocence and loyalty. I accompanied Superintendent Shelton ahead of the troops to Butler's trading post, about 9 or 10 miles distant from Aneth on the road to Four Corners. His store is close to Polly's hogans, and he has known these Indians well for years; said By-lil-le came into his store not long ago with 15 other Navajos, armed to the teeth; said the Indians said their hearts were bad; that they were bad Indians, and that they threatened to kill everybody. Mr. Butler, who is a trader of many years' standing in this country, and who has the reputation of being a fearless man, told me that he thought it one of the worst corners he was ever in; said the talk got so bad that he reached down under his counter and cocked his revolver and then asked By-lil-le if the latter had it in for him, Butler, to say so, as he had determined to kill By-lil-le and as many more as possible, if worst came to worst. By-lil-le would talk in Navajo and English mixed, and in English told Butler he was not mad at him and in Navajo they were all mad at the better class of Indians, who were following the directions of the superintendent, and that they had better leave his crowd alone. Butler said soon after, much to his relief, By-lil-le and his men left. He thinks Polly more villainous, if such be possible, than By-lil-le, and congratulated me on surprising and capturing them without loss, as he said they were a bad lot and would have put up a stiff fight if they had known we were coming. Butler said he thought that if these Indians had not been captured soon that by spring they would have so stirred up the trouble and so agitated the renegade Black Mountain Navajos, Piutes, and Utes in that section that a very serious Indian war would have resulted. I may state that this same opinion is shared by a number of other gentlemen throughout this country. I shall refer to these Black Mountain Navajos and Piutes in a future report, as I believe the Department should be fully acquainted with some facts which have been learned about them. Mr. Butler was of the further opinion that the troops had arrived at a most opportune time. Six weeks ago, he said, when there was trouble there, the Indians had been watching for soldiers and prepared to give them a warm reception, and later on he did not think two troops of cavalry could have handled the situation. He was of the opinion that the surprise and capture of these Indians without any loss to the command was, to say the least, most fortunate.

The same views were expressed by Mr. Charles Fritz, trader at Four Corners, Utah, as those of the other gentleman quoted, and as they are all said to be reliable and trustworthy men, of long years' experience with the Indians, I believe their opinions are all entitled to much weight, and for that reason give them as indicative of the attitude of the Indians and the situation up to the time we entered southern Utah. They are men of the old frontiersmen type, who have in the past for thirty years lived with these Indians, and who have many times been obliged to defend themselves against hostile Utes, Piutes, and Navajos. They are well informed of the Indians' characteristics, as well as acquainted with the Indians themselves, and in saying what they did I do not believe that they are unnecessarily alarmists, but have stated cold facts, which are corroborated by the testimony of other people and friendly Indians, and, when taken in connection with Superintendent Shelton's reports of the Indians, indicate far more clearly than anything I could state the character of these Indians, their talk and designs, and the general situation. Notwithstanding the Indians' statement that they are good friends, etc., in the face of such incontrovertible evidence it is a case of actions speaking louder than words. The prisoners were carefully guarded at Four Corners and all precautions taken against a possible attempt to rescue or attack on the camp. On the 30th instant the troops marched from Four

Corners to Shiprock, together with the prisoners, including Sis-co, wagon train, etc., and arrived here at 4 p. m. this date, at which time I immediately sent a telegram notifying you as briefly as possible of the facts. Nothing of importance happened en route to Shiprock. A log cabin here was turned over to me for use as a guardhouse and the necessary bars placed over the windows and sufficient guard detailed over the prisoners to insure their safe-keeping. As to the general situation on the San Juan in the vicinity of Aneth, where the trouble occurred, I have the honor to inform you as follows: The Indians in this section are more or less disturbed by the seizure of By-lil-le and his men, as well as by the killing of the Indians, who first fired on our forces, for it was reported by these Indians who escaped that we had opened fire on By-lil-le's men first. This statement was misleading and false, as it was no doubt intended to be, inasmuch as the hostile Indians knew very well that if it became known that they had begun the fight, after the Indian police had called upon them to surrender and lay down their arms, that they would get little sympathy from the good Indians, whereas if they could make it appear that the soldiers were the aggressors and had fired upon them without provocation they would have the sympathy of all Indians and possibly their aid. Superintendent Shelton wisely sent out police and runners in all directions to spread the true account and to reassure all friendly Indians of the Government's pacific attitude toward them, and this is already bearing fruit, since Indians are coming in and saying how glad they are that the bad men are gone. The traders are all of the opinion that things will quiet down in a very short time, unless the Black Mountain Navajos stir up trouble, which I hardly believe likely now. Should they, however, do so, it would require a strong force, in my opinion, fully equipped and supplied for a long time, to deal with them, as they are in an almost inaccessible region about 100 miles southwest of here, and never have, so far as I can ascertain, been conquered or have they ever complied with the directions of the agents except in so far as they saw fit to do. Superintendent Shelton states there must be 2,000 Indians in this district. When the Navajos were subjugated and taken to Fort Sumner these Black Mountains retreated into the vastness of these mountains and were not molested. From this it is plain to be seen that should any trouble occur with them it would require a large force to operate against them. As stated, no trouble is apprehended at present, as they are apt to remain fairly peaceable so long as not interfered with. The Navajos on the San Juan will all probably do more or less talking after this occurrence, but I believe that they have received a most effective lesson and since the prime movers of the trouble in that district are here in captivity it is hardly to be anticipated that anything more than talk will come from them.

There have, moreover, been informed that upon their conduct hereafter will more or less depend the degree of punishment the prisoners are to receive. A man came from Butler's trading post this morning and reports all quiet in the section where the trouble occurred and says no further trouble is looked for now. In view of these facts I believe I can safely state that no prolonged stay of this command is necessary at this agency or in this section of the country. This opinion is likewise shared by Superintendent Shelton himself, with whom I have worked in conjunction from the time of my arrival here. The superintendent has been most kind, courteous, and hospitable to us in every way, giving us all the assistance possible, accompanied us in person on our expedition, and would have been present at the capture had he known beforehand that it was to occur that night. He had assured me that everything done so far has met with his full approbation and would have his hearty support in his own department. Our relations have been most satisfactory, and the success achieved in capturing these Indians is in no small degree to be attributed to the superintendent and the loyal assistance given me. He believes as well as myself that a week's longer sojourn here from the time we arrived, October 30, will be ample time to ascertain whether there will be any further necessity for troops. If all is found by reports from Aneth to be quiet in that section he looks for no further trouble and will recommend the troops be withdrawn and directed by wire to return to their proper station. I concur fully in this opinion and recommendation, and request that the same be adopted. This will give time for much needed rest to the command, enable horses to be reshod, wagons repaired, etc., and at the same time the troops will be here in reach in case of any unforeseen emergency. If the troops are to remain a longer period than this, at least ten days' additional rations must be asked for and this dispatched here without delay, as there are only sufficient rations on hand to last the command until the 12th of November. I spared no stock in the effort to reach this point promptly, and while the trip has been very severe since we left Fort Wingate, October 22, having marched in round numbers 237 miles to date, and the men and horses are tired from the hard work, all animals are in excellent shape and the men well with the exception of two men, who were hurt in slight accidents en route and who are getting along nicely, and a few days' rest will prove most beneficial to the command.

With reference to Indians killed their names are as follows: Nah-pi-waze (Smarty), Cle-waze; also one Indian, name unknown, and the one wounded was By-lil-le-be-tah, nephew of By-lil-le himself. All are said by Superintendent Shelton and Indian traders to have been as tough Indians as By-lil-le had, and that if there had been a selection made in advance as to what Indians should have been killed no better selection could have been possibly made. The Indians killed whose names are given have repeatedly threatened to kill Mr. Hodley, additional farmer at Aneth. Five of By-lil-le's warriors were away at this time in Colorado, so of course were not captured. Relative to the disposition of the prisoners captured, sufficient has already been stated to show the dangerous character of these Indians and the deplorable influence they have had upon other Indians. The friendly Indians have asked permission to kill By-lil-le and the worst of his men, and when this permission was refused they have asked Superintendent Shelton to send for soldiers and take By-lil-le and Polly away from here forever. This Indian By-lil-le, possibly 55 years of age, was so mean years ago that his own people threatened to kill him unless he went away and never returned. Acting under compulsion he therefore left the section, went away, and remained with Bill Hyde, said to have been one of Brigham Young's destroying angles, so called, somewhere in Utah for a period of fifteen years, during which time he added to his own savage cunning all the deviltry that could be acquired from this disciple of Young. It is plain to be seen that he is a vicious Indian and a dangerous one. Polly is the same and said to be more murderous than By-lil-le; both of them were in captivity at Fort Sumner years ago. I would therefore recommend that in view of their bad reputation and the trouble they have been causing in this section for the last four years, and the evil influence they have exerted over other friendly Indians, that these two Indians, with the approval of the Commissioner of Indian Affairs, be confined in military prison at hard labor for a period of not less than ten years, some such place as Alcatraz Island, Cal., where the Navajo prisoners were sent whom I secured at Fort Defiance, Ariz., two years ago this fall, and at the conclusion of their confinement they be sent to some other Indian reserve or agency and never permitted to return here. At the earnest solicitation of some excellent Indians I have told them I would endeavor to have this done, and firmly believe it is for the best interest of all concerned that this recommendation be carried into effect. In the case of the other Indians captured and whose names are as follows: 1. Sis-co; 2. Hosteen Et-so; 3. By-lil-le-be-tah, sr; 4. At-city; 5. Hosteen Es-cah-be-ga, 6. This-cheen-nah-ki-nah-la-be-ga; 7. Clize-slon-be-ga; 8. Mel-e-von.

In view of their failure to obey the commands of their superintendent, to dip their sheep, to send their children to school, raping girls and carrying off young girls for wives, having plural wives, carrying dangerous weapons, resisting arrest, advising their followers to fire upon us, in general opposing the superintendent in his efforts to improve the Indian and better his condition, I recommend that, with the approval of the Commissioner of Indian Affairs, they be confined at some suitable military prison at hard labor for a period of two years, and if their conduct has then been good, that they then be returned at the conclusion of this term of imprisonment. That in the meantime pending final decision of this matter, that these prisoners be taken by me to Fort Wingate, N. Mex., under guard, and held there awaiting final action, providing my troops return there in the immediate future.

Superintendent Shelton has informed me that he would furnish me with a copy of his report made to the Commissioner of Indian Affairs; when the same has been received I shall forward same to be filed in connection with this report.

A report will be submitted relative to the subject of the Black Mountain Indians as soon as the same can be prepared. Attention is respectfully invited to accompanying sketch of the scene of capture and action October 28, 1907, executed under the direction of Second Lieut. C. W. Stewart, Fifth Cavalry, topographical officer of the command.

In conclusion I take pleasure in stating that I can not commend too highly the conduct of all officers and men during the skirmish of the 28th instant; every one performed his duty in a soldierly and excellent manner, creditable to themselves and befitting the reputation of their regiment.

Very respectfully,

HARRY O. WILLIARD,
Captain, Fifth U. S. Cavalry, Commanding Squadron.

The ADJUTANT-GENERAL,
Headquarters Department of the Colorado, Denver, Colo.

Official copy respectfully furnished Superintendent Shelton, Shiprock, N. Mex., for his information.

HARRY O. WILLIARD,
Captain, Fifth U. S. Cavalry.

SHIPROCK, N. MEX., *October 30, 1907*,
(Via Farmington, N. Mex.)

To COMMISSIONER INDIAN AFFAIRS,
Washington, D. C.

Troops have just returned from southern Utah. Informed by wires that they arrested By-a-lil-le and 9 other Indians; 3 others were killed and 1 wounded while shooting at the Indian police and soldiers. The Indians are quiet and I do not anticipate any further trouble unless the Black Mountain Indians cause it. Report will follow.

SHELTON, *Superintendent*.

SAN JUAN SCHOOL,
Shiprock, N. Mex., November 4, 1907.

SIR: I have the honor to refer to my reports of March 29, 1907, and September 18, 1907, relative to an Indian named By-a-lil-le, who has been causing trouble, and to my telegram dated October 30, in which I said: "The troops have just returned from southern Utah, where they arrested By-a-lil-le and 9 other Indians; 3 others were killed and 1 wounded while shooting at the Indian police and the soldiers. The Indians are quiet and I do not anticipate further trouble unless the Black Mountain Indians cause it. Report will follow."

In this connection I have to report that Troops I and K, Fifth U. S. Cavalry, from Fort Wingate, N. Mex., with Capt. H. O. Williard in command, arrived here late in the afternoon October 26, where they camped over night, during which time the commanding officer looked over my correspondence directed to your office bearing on the subject and discussed the matter verbally with me. It was decided that By-a-lil-le should be placed under arrest as soon as possible, in order to prevent him from gathering his followers for a resistance and from going to the Black Mountains after other Indians to join his band, which in all probability would have caused an uprising in that section. He had threatened to go to these mountains for help in case soldiers should come into the country, and had ordered his men to shoot the soldiers and policemen if they came.

The troops started from here early Sunday morning, the 27th, arriving at the Four Corners trading post that afternoon. I gathered up all of the Indian police that were near the agency and directed them to go down the river and to the Carriso Mountains and notify a number of prominent Indians to meet the troops at Four Corners. It was our intention to locate By-a-lil-le and surround him and his band with the troops, Indian police, and other Indians, and if possible, to arrest them without resistance. I left the agency some time after the troops started, passing them on the road. I reached Four Corners first, where I found a member of By-a-lil-le's band. I detained him there until the commanding officer arrived, who placed him under arrest. I left the troops at this point and drove down the river with an interpreter, in order to locate By-a-lil-le, that I might notify the commanding officer where he could be found, intending that if I located him on the north side of the river to notify the commander, so that he might come down that night. I stopped at the home of one of By-a-lil-le's wives, 16 miles below the Four Corners, and learned that he was on the opposite side of the river, after which I drove to Heffernan's trading post to spend the night, intending to start back early next morning to meet the troops and inform the commander what I had learned. Next morning, just at daybreak, while hitching up my team, I heard guns fired in the direction of By-a-lil-le's camp on the south side of the river. Before I could reach this place I met the troops with By-a-lil-le and eight of his followers, who had been taken prisoners. The commanding officer informed me that the Indians had opened fire on the police and soldiers, and that they were compelled to fire back at the Indians, and that two were known to be dead and one wounded. I will inclose herewith a report signed by Capt. Harry O. Williard, directed to the Adjutant-General, Department of the Colorado, Denver, Colo, which will explain the movements of the troops from the time I left them at the Four Corners until I met them the next morning with the prisoners under arrest.

The troops were located in camp at Aneth; had something to eat, after which we went up to where the trouble occurred, for the purpose of burying the dead men and to look after the wounded ones. None of them could be found. I heard later that they had been carried off to the rocks by the women. No Indians, except a sick man and one child, were seen in this settlement, but 2 miles above in another settlement several Indians were seen and talked with who said they were glad By-a-lil-le had been captured; that he and his band had by threats and intimidations held them back for years and prevented them from making progress as the Indians had in other sections.

While the appearance of soldiers in the country and the arrest of By-a-lil-le and his band, as well as the killing of two men and wounding another, caused a little excite-

ment among the Indians, everything is as quiet as could be expected. Every Indian that I have talked with wants By-a-lil-le and Polly sent off and kept away from the reservation, and they say the others should be punished for a while.

The father of De-cla-yaze, one of the men killed, came to see me to-day and said that he blamed no one but his son; that he had been advised and talked with time and again by good people, and that he had persisted in doing as By-a-lil-le had told him. This man was more than a mile up the river from where the Indians were arrested, and when he heard the troops and police pass he followed them down with his gun and opened fire on the police, and continued to shoot until he was killed. Nah-pa-yaze, the other man killed, was an "all-round" bad man as well as the other one. Aside from By-a-lil-le's immediate band, no regrets have been expressed that either of these men were killed. By-a-lil-le-be-tah, the wounded man, was a nephew of By-a-lil-le, and was one of his regular bodyguards. That these men had been instructed to shoot in case of interference by the police or soldiers was shown by their actions. The members of this band that are under arrest, as well as a number of Indians that are not arrested, say that By-a-lil-le told them to always be ready and shoot the soldiers or police when they interfered with them. I had been told this before.

I regret very much that it became necessary to kill or wound anyone, but I can not see how it could have been avoided. Captain Williard took every precaution possible to avoid hurting the Indians. The policemen and other Indians begged these men to stop shooting, and told them they would get killed if they did not stop and surrender.

In my telegram dated October 30, I stated that three men were killed instead of two; this was the first report, but I found it to be a mistake.

A more favorable time could not have been selected for arresting By-a-lil-le, as the largest part of his band were not at the camp when the arrest was made. Five of his worst men were in Colorado. If there had been any intimation that soldiers were in the country, all of the Indians belonging to this band would have been on hand armed and ready to fight. They have been preparing for a fight for several months.

I do not think that there is any further danger of trouble along the San Juan River. The majority of the Indians are good and law-abiding people, and the bad Indians will profit by the experience of those now in trouble. The Indians living in the country between Bluff, Utah, and the Black Mountains may get worked up a little and do some talking, but I believe it will end with this. In time, some steps will have to be taken to teach these Indians and those west of there that they live in a civilized country.

The prisoners in custody are all very penitent and say that they have pursued the wrong course. A large number of Indians were here yesterday, and the prisoners were allowed to talk to them. They told the Indians that they had been on the wrong road and that it had got them in trouble. They sent word to the rest of their band to turn their guns over to me and the farmer and ask us to sell them, and advised them to follow the advice of myself, the farmer, and the good Indians. They also sent word for their friends to come to the agency and promise that they would behave themselves and stay out of trouble. A part of them were here to-day and have gone back to bring others.

All of the Indians on this part of the reservation, as well as the most of those down the river, are pleased that these men have been arrested. Some of them want the leaders hung, while all of them, except near relatives, want all of the prisoners sent away and punished for a while.

While By-a-lil-le has been the ring leader of this band of bad men and has been the cause of most of the trouble, the others have been willing to carry out his orders and disregard the advice of myself, the farmer, and the leading Indians. Next to By-a-lil-le, a man named Polly had been most troublesome. Like By-a-lil-le, he has been among the white people a great deal, and he knew better than to act as he has. He has been a willing assistant to By-a-lil-le in all of his meanness, and has been equally as active in preventing the Indians from dipping their sheep. By-a-lil-le ordered the Indians to keep their sheep out of the way and not allow them to be dipped, and then had one of his wives take his to the plant and have them dipped. Polly sent his sheep to the hills and refused to bring them in and prevented others that wanted to dip from doing so. I consider Polly more dangerous as an individual than By-a-lil-le. And I think the two should receive equal punishment.

In order to maintain discipline on this reservation and to teach the Indians that are inclined to be outlaws that this Government will not tolerate an armed body of bad men, I think all of the prisoners, except one old man, should receive some punishment.

The names of the prisoners are: 1, By-a-lil-le; 2, Polly; 3, Sis-co; 4, Hosteen-et-so; 5, By-a lil-le-be-tah, sr.; 6, At-city; 7, Bis-cla-e; 8, Tha-el-chee-nah-ki-be-ga; 9, Cliz-e-slon-be-ga; 10, Mele-yon.

I would respectfully recommend that Hosteen-et-so, the old man, be released ane permitted to return home. And that By-a-lil-le and Polly be confined in somd suitable military prison at hard labor for a period of ten years, and that the other seven men be confined in some suitable military prison for a period of two years; if their conduct has been good in the meantime they may be returned to their homes.

I wish to state that Captain Williard and the other officers and men with the troops have rendered good service here. Captain Williard has talked to the Indians several times in council and advised them in a friendly and kind manner to heed the advice of their agent and others whose duty it was to give advice; at the same time he made it plain to the Indians that the Government would not tolerate a band of bad men who joined themselves together to defy law and order or to intimidate or interfere with Indians that were conducting themselves properly.

It is my opinion that troops will be no longer needed in this vicinity, and I respectfully recommend that they be instructed to return to Fort Wingate and take the prisoners with them for safe-keeping until their cases are finally disposed of.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, November 9, 1907.

SIR: I have the honor to acknowledge the receipt, by your reference of the 6th instant, of the following telegram addressed to the Adjutant-General of the Army under date of November 5, by the commanding officer Department of Colorado:

"Captain William, commanding the two troops Fifth Cavalry sent to Aneth, Utah, on Navajo Reservation, reports under date November fourth, the purpose of his visit there accomplished, he reports conditions satisfactory and that both Indian Superintendent Shelton and himself are of the opinion that the troops might properly now be withdrawn, but taking along the ten troublesome Indians now held prisoners to Wingate, pending final disposition of their cases. Recommend that I be authorized to return troops to proper station and hold in confinement the ten Indian prisoners at Fort Wingate, pending instructions from the Interior Department as to final disposition of prisoners. Full report of Captain William's movements will be made shortly by mail,"

Agreeably to your request for an expression of the views of this Department in the matter, I have to advise you that it was referred to the Commissioner of Indian Affairs, and that he and the Department fully concur in the opinion of the commanding officer, that there is no further need for troops, and that the ten Indian prisoners mentioned should be held temporarily at Fort Wingate.

The matter of the final disposition of these Indian prisoners will be made the subject of another communication. The telegram is returned herewith.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

The SECRETARY OF WAR.

WAR DEPARTMENT,
Washington, November 13, 1907.

SIR: Referring to your letter of November 9, 1907, I have the honor to inclose herewith for your information a copy of a telegram of November 12, 1907, to the commanding general, Department of the Colorado, Denver, Colo., authorizing him to withdraw the two troops of the Fifth Cavalry from Aneth, Utah, and to hold the 10 Indian prisoners in confinement at Fort Wingate, N. Mex., pending receipt of further instructions.

Very respectfully,

ROBERT SHAW OLIVER,
Acting Secretary of War.

The SECRETARY OF THE INTERIOR.

WAR DEPARTMENT,
THE ADJUTANT-GENERAL'S OFFICE,
Washington, November 12, 1907.

COMMANDING GENERAL, DEPARTMENT OF COLORADO,
Denver, Colo.:

Reference your telegram November 5, Acting Secretary War authorizes you to return two troops Fifth Cavalry, from Aneth, Utah, to proper station and to hold 10 Indian prisoners in confinement at Fort Wingate pending further instructions.

ADJUTANT-GENERAL.

SAN JUAN SCHOOL,
Shiprock, N. Mex., November 16, 1907.

SIR: I have the honor to report that on the evening of October 28 last, while the troops were in camp at Aneth, Utah, an Indian named Nick Lee visited the camp of the Indian police and Government scouts, and while there he severely criticised the soldiers for arresting By-a-lil-le and his men and criticised the Government for sending the soldiers on the reservation. After the troops had returned to this place this man Lee also came to the agency, when the police and scouts informed the commanding officer and myself of his remarks. The commander immediately placed him under arrest and notified his Department of his action, requesting that the prisoner be taken to Fort Wingate for three months' confinement. I will inclose herewith a copy of a letter addressed to the commanding officer, stating that the arrest of this man meets with my approval; that he had made more or less trouble on this reservation since his return from the penitentiary.

In this connection I have to say that the man referred to served a ten years' sentence in the Arizona penitentiary for murder. And since his return to the reservation, some four years ago, he had made considerable trouble for himself and others. For a year or more he was a member of By-a-lil-le's band, but was compelled to leave that locality on account of threats made by By-a-lil-le and others against his life. He came to me and asked for work and promised to behave himself. And aside from interfering with other people's business he has not been a bad man. He is the only man that has had anything to say against the action of the Government in suppressing the trouble in southern Utah, and I trust that the action of Captain Williard in arresting him will meet the approval of your Office. His Department approved of his action.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

The COMMISSIONER OF INDIAN AFFAIRS.

SAN JUAN SCHOOL,
Shiprock, N. Mex., November 4, 1907.

DEAR SIR: In the matter of Nick Lee, the man you have under arrest for trying to incite trouble at your camp the night after the arrest of By-a-lil-le and his band, I have to say that the arrest of this man meets with my approval and I think that three months' confinement will teach him a good lesson. He has made more or less trouble on this reservation since he returned from the penitentiary.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

Capt. H. O. WILLIARD,
Fifth Cavalry, Commanding.

SAN JUAN SCHOOL,
Shiprock, N. Mex., November 16, 1907.

SIR: I have the honor to report that the troops have returned to Fort Wingate, taking with them ten prisoners. Hosteen-et-so, the old man referred to in my letter of the 4th instant, was released. I have to report further that the arrest of these renegade Indians has had the desired effect. All of the leading Indians are well pleased with the outcome of this affair, and they are coming here daily from different parts of the reservations to assure me that they are pleased. Many of them have requested me to thank you for sending the soldiers here and for taking By-a-lil-le and his followers away.

These people were hated and feared more than I ever realized. Indians have been coming here every day since the trouble occurred and I have only heard of one that had any fault to find, and he is an ex-convict, who was for a time a member of the same band. I will refer to him in another letter.

All of the former members of By-a-lil-le's band, including his wives, sons, and sons-in-laws, have been to see me, and they all say that By-a-lil-le is to blame for the trouble. His own sister told me that he had always lied to them and had prejudiced them against the Government and the Indians that were trying to please the Government. His oldest son brought me his and his father's guns and placed a younger brother in school. This boy was placed in school without any solicitation on my part. All of these Indians admit that they have been mean, and say that they are going to turn over a new leaf and live as they should. The other Indians promise to be friendly with them and help them to be better people.

By-a-lil-le and the other prisoners were each given an opportunity to talk to their friends and the other Indians. They all admitted that they had been doing wrong, and advised those that they talked to to profit by their experience and stay out of trouble.

A number of prominent Indians have talked to the different crowds that have been here, and in each case the speaker as well as the other Indians approved of what had been done. No one has suggested clemency for any of the prisoners, and the release of the old man met with some opposition.

I can not see any prospects of further trouble on this reservation. All the Indians are satisfied with the present situation, now that the worst Indians and trouble makers are gone. Everybody has settled down to work.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, November 22, 1907.

SIR: On November 9 I had the honor to acknowledge the receipt, by your reference, of a telegram addressed to the Adjutant-General of the Army on November 5 by the commanding officer, Department of the Colorado, relating to the return from Aneth, Utah, of two troops of the Fifth U. S. Cavalry to Fort Wingate, N. Mex., and holding as prisoners 10 hostile Indians arrested on the Navajo Reservation pending the final disposition of their cases.

In accordance with your request for an expression of my views in the matter, I advised you that the Commissioner of Indian Affairs and the Department fully concurred in the opinion of the commanding officer that there was no further need for troops at Aneth, and that the 10 prisoners mentioned should be held temporarily at Fort Wingate; also that their final disposition would be made the subject of another communication upon receipt of further information respecting the matter.

The Indian Office received on the 13th instant a report from the superintendent of the San Juan School, Shiprock, N. Mex., in regard thereto, accompanied by an official copy of one addressed by Capt. H. O. Williard, Fifth Cavalry, commanding squadron, to the adjutant-general, Department of the Colorado, Denver, Colo., explaining the movements of the troops from the beginning to the end of the march and the arrest of the Indians now held as prisoners.

It is shown by these that Superintendent Shelton and Captain Williard worked in conjunction from the time of the arrival of the latter upon the scene of trouble, and that the former accompanied the troops in person upon their expedition.

In view of the bad character of two of the ring leaders—By-a-lil-le and Polly—their hostility to the Government, their efforts to kill those who interferred with them, the fact that they were "armed to the teeth;" that they resisted arrest; that their band, under former instructions given them, fired upon the troops, and for other reasons which will be set out hereinafter, the superintendent and Captian Williard recommended that the two Indians named, with the approval of the Commissioner of Indian Affairs, be confined in a military prison at hard labor for a period of ten years. The captain suggests that at the conclusion of their confinement they be sent to some other reserve or agency and never permitted to return to the Navajo Reservation.

In the case of the other Indians (8 in number) captured, namely, Sis-co, Hosteen-et-so, By-a-lil-le-be-tah, sr., At-city, Bis-cla-e, Tha-el-chee-nah-ki-be-ga, Cliz-e-slon-

be-ga, and Mele-yon, Captain Williard recommends, for good and sufficient reasons, that, with the approval of the Commissioner of Indian Affairs, they be confined in a similar manner for the period of two years. The superintendent concurs in this recommendation, except in the case of Hosteen-et-so, who, being an old man, should, he thinks, be released and returned home.

The Indian Office has known all along of the bad influence of By-a-lil-le among a settlement of Indians on the Navajo Reservation south of the San Juan River, some 40 miles northwest of Shiprock, N. Mex., but hoped, through the superintendent and the farmer in charge, to overcome it, gain his confidence, and persuade him to exert his influence with his clan for good. Such efforts, however, were unsuccessful, although put forth in a most diplomatic and careful manner.

He (By-a-lil-le) found fault with the Indians who tried to improve their condition under instructions from the superintendent, and by threats and intimidation endeavored to enlist their support in defying the Government and its authority, and he and his band of 30 or more outlaws purchased arms and ammunition and threatened to kill Mr. Shelton (the superintendent) and Mr. Holly (the farmer), the policemen, or anyone else who came to interfere with them in any way whatever.

By-a-lil-le is a medicine man and is known among the Indians as a rain maker, many being so credulous as to believe that he could make it rain or cause the rain to cease. When his pretensions failed to have the desired effect he threatened to kill those who denied his power and did not believe in him and his followers. By coercion he enlisted a number of Indians on his side who were not in sympathy with his movements.

With his armed brigand force he went into the outlying districts of the reservation and threatened to exterminate the Indians who sent their children to school or took up the white man's ways, and to bring all kinds of disaster upon the ignorant who failed to follow him, using his craft and cunning as a "big medicine man" and telling them that if the soldiers came he would cause the lightning to strike them dead.

He inspired the Indians with awe wherever he went, filled them with a restless spirit, terrorized the white settlements bordering on the reservation, and lived by depredating upon the stock and other property of the peaceable Indians and the whites. His moral character is bad—the worst type. He and his followers committed rape, compelled widows and their daughters of 12 and 13 years to live with them as wives, and often sold their own daughters for horses and sheep to older men for second and third wives.

The influence of this band of renegades and outlaws extended beyond their own settlement. It reached the Navajos, Piutes, and Apaches who inhabit the brakes and mountains of the San Juan and Colorado Rivers, beyond the restraints of civilization, where they have roamed at will, and whence they came to steal from and commit other outrages against friendly Indians and white settlers. As an illustration, R. S. Connell, special Indian agent, says in a report of April 6 last to the Commissioner of Indian Affairs respecting these classes that he saw 12 Piutes come into a cooperative store at Bluff, Utah, equipped with pistols, belts, and cartridges; that one deliberately shot an arrow into the middle of the floor; that another amused his companions by hacking the store counters with a big knife, and that the trader feared to object, saying that it was easier to tolerate and feed such Indians than to fight them. They were mounted and had rifles strapped to their saddles.

Mr. Heffener, an Indian trader at Aneth, Utah, who has resided a number of years in that locality and is thoroughly conversant with the characteristics and habits of By-a-lil-le and Polly, as well as of their men, expressed the opinion to Captain Williard that they were "vicious, bad Indians of the worst type;" that there were none more cunning, crafty, or villainous, and that if anything Polly was worse than By-a-lil-le, because the former not only incited the Indians to acts of deviltry, but did not hesitate to commit them himself.

Mr. Butler, who has a trading post some 10 miles from Aneth on the road to Four Corners, near Polly's hogan, and who has known these Indians for years, regarded them as dangerous, and informed Captain Williard that if they had not been surprised and captured as they were, they would have "put up a stiff fight." He thought that if they had not been arrested they would by spring have stirred up such trouble and so agitated the Black Mountain Navajos, Piutes, and other Indians that a serious Indian war would have resulted.

The same views were expressed by Charles Fritz, a trader at Four Corners, Utah, as those of the other traders above mentioned, and as they are all said to be reliable and trustworthy men of many years' experience with the Indians, their opinions are regarded as entitled to weight, and for that reason are given as showing the attitude of the Indians and the situation up to the time the troops entered southern Utah. The views and opinions of these men are corroborated by the statements of other

whites and friendly Indians. The latter have long wished to have these leaders removed from the reservation because of their bad characters, threats, and vicious habits, and it is said showed delight at learning that they had been arrested and were to be sent away. Some, indeed, even urged that By-a-lil-le and Polly be killed, because they kept the Indian settlements in a state of constant dread and terror, and it was believed that they could cause death by shooting hidden darts into the body of a living Indian. About September 1 last a prominent Indian named Do-hi-e died after a short illness. Before dying he told his friends that By-a-lil-le was a witch and had killed him by shooting darts into his body. For this reason Do-hi-e's friends insisted that By-a-lil-le should be put to death or taken out of the country. This shows the feeling entertained toward the outlaws by the Navajos who are good, friendly, and willing to carry out the plans of the Government for the improvement of their condition and the advancement of their civilization.

The peaceable and progressive Indians insisted that there was no use in trying in a mild way to get these renegades to behave themselves, and asked that soldiers be sent into that locality to show the latter that the United States Government is able and willing to protect the people who are trying to make an honest living and be self-supporting and law-abiding.

Troops were sent on a peaceful mission to the neighborhood of this hostile band. They were under the command of an officer of good judgment and experience. He and his fellow-officers considered the situation. It was decided that By-a-lil-le and his men should be arrested in order to avoid a serious conflict. Accordingly they made a night march upon him and surprised and captured him and his immediate followers about daybreak the next morning. The Indian police and Indians accompanying the troops were apprehensive that By-a-lil-le had learned of their presence and would ambush them. While the arrest of By-a-lil-le and his immediate followers was being made the troops were fired upon by other Indians in the vicinity. The horse of Captain Williard's first sergeant was shot. The troops were ordered to defend themselves and returned the fire, killing two Indians and wounding one.

The father of De-cla-yaze, one of the Indians killed, visited Superintendent Shelton on the 4th instant and said that he blamed no one but his son; that the latter had been advised and talked with time and again by good people, but had persisted in doing as By-a-lil-le had told him; that De-cla-yaze was more than a mile up the river from where the Indians were arrested; but when he heard the troops and police pass, followed them down with his gun and opened fire and continued shooting until killed.

Nah-pa-yaz, the other Indian killed, is reported by the superintendent to have been "an all around bad man," and aside from By-a-lil-le's immediate band, no regrets have been expressed, according to the superintendent's report, that either of these men were killed. The wounded Indian is a nephew of By-a-lil-le, and was one of his regular bodyguards. The members of the band under arrest, as well as a number of Indians not arrested, say that By-a-lil-le had told them to be ready always to shoot the soldiers or the police if they were interfered with.

The prisoners have defied the Government and its authorities; they have impeded the progress of other Indians in their efforts to improve and better their condition; they armed themselves with modern rifles and ammunition, threatened to kill any person or persons who molested them, and fired first upon United States troops in the discharge of their duty. For these and the other reasons above set out, I recommend, after consulting with the Commissioner of Indian Affairs, that all the prisoners above-named, except Hosteen-et-so, be transported to Fort Huachua, Ariz., and confined there for an indefinite period at hard labor, the Indian Office to pay the expenses of their transportation and subsistence while there, as usual in such cases.

In the case of Hosteen-et-so, I recommend, at the instance of the Commissioner, that he, being an old man, be released and permitted to return home from Fort Wingate under promise of future good behavior.

The other Indian prisoners can be released whenever it may be deemed best to do so, each case to be considered on its own merits, the conduct of the prisoner during confinement, and his promise of future good behavior after his return home.

In conclusion, I commend Captain Williard, the commanding officer, for the tact and good judgment displayed in dealing with these Indians, for his success in allaying the excitement caused among other Indians by the presence of the troops, and for the wholesome advice given them in council after the arrests were made. He has on former occasions been charged with the duties of this sort which I am informed he discharged with credit to himself.

The other officers and men with the troops on this expedition rendered good service, for which they also are to be commended.

Very respectfully, JAMES RUDOLPH GARFIELD,
Secretary.

The SECRETARY OF WAR.

WAR DEPARTMENT,
Washington, November 25, 1907.

SIR: I have the honor to acknowledge receipt of your letter of 22d instant relative to the disposal of ten Indians arrested by troops near Aneth, Utah, and advise you that the recommendations contained therein will be carried out.

Thanking you for your commendation of the services performed by the officers and men taking part in this expedition, which will be duly communicated to them, I remain,

Very respectfully,

ROBERT SHAW OLIVER,
Acting Secretary of War.

The SECRETARY OF THE INTERIOR.

WASHINGTON, *December 4, 1907.*

SIR: Referring to previous correspondence in regard to an Indian named By-a-lil-le and his band of outlaws on the Navajo Reservation, you are informed that on November 22 the Secretary of the Interior recommended to the Secretary of War that By-a-lil-le and nine other Indians recently arrested by United States troops near Aneth, Utah, be transported to Fort Huachucha, Ariz., and confined there for an indefinite period at hard labor, with the exception of Hosteen-et-sa, an old man, whose release was recommended, with permission to return home.

The Office is in receipt by departmental reference of a letter dated November 25 from the Acting Secretary of War advising the Secretary of the Interior that his recommendations will be carried out.

Very respectfully,

F. M. CONSER, *Chief Clerk.*

The SUPERINTENDENT SAN JUAN INDIAN SCHOOL,
Shiprock, N. Mex.

DEPARTMENT OF THE INTERIOR,
Washington, December 14, 1907.

SIR: On December 11 the Acting Secretary of War returned to the Department of the Interior my letter of November 22 referring to previous correspondence in regard to the arrest of ten Navajo Indians near Shiprock, N. Mex., and recommending that they, except Hosteen-et-so, be confined at hard labor at Fort Huachuca, Ariz., for an indefinite period, each case to be considered on its merits for release. He invited attention to the fourth indorsement thereon, showing that nine of the Indian prisoners ordered transferred to the said fort left Fort Wingate, N. Mex., on the 6th instant, under guard, for their new place of confinement.

On the 13th instant I referred the paper to the Commissioner of Indian Affairs for his information and notation of the facts in the case. It is returned herewith, as requested in the fifth indorsement thereon.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

The SECRETARY OF WAR.

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1908.

SIR: On January 30, the Acting Secretary of War referred to me a telegram addressed to the Adjutant-General of the Army, this city, by the commanding general, Department of the Colorado, saying that it has been decided to release two Navajo prisoners at Huachuca at once, one of whom is in an advanced stage of tuberculosis, and requesting that he be authorized to turn them over to the Navajo agent at Guadalupe, and that I instruct the agent accordingly. The Acting Secretary asks for an expression of my wishes in the premises.

In response I have to say that I am perfectly willing to leave the matter to the discretion of the War Department.

The agent will be furnished with copies of the correspondence and directed to cooperate with the commanding officer.

Very respectfully,

JESSE WILSON,
Assistant Secretary.

The SECRETARY OF WAR.

WASHINGTON, *February 5, 1908.*

SIR: On January 30 the Acting Secretary of War referred to the Secretary of the Interior a telegram addressed to the Adjutant-General of the Army, this city, by the commanding general, Department of the Colorado, saying that it had been decided to release two Navajo prisoners at Fort Huachuca, Ariz., at once, one of whom is in an advanced stage of tuberculosis, and requesting that he be authorized to turn them over to you at "Guadalupe" (presumably Gallup) and that the Secretary instruct you accordingly.

On February 1 the Assistant Secretary of the Interior advised the Secretary of War that he was perfectly willing to leave the matter to the discretion of the War Department, and that you would be furnished copies of the correspondence and directed to cooperate with the commanding officer.

I inclose a copy of the Assistant Secretary's letter and have to direct that you be governed accordingly.

You will hold the two Navajo prisoners, when they shall have been turned over to you, until given final instructions as to their release. They lived formerly on the northern part of the Navajo reservation and were under the jurisdiction of the superintendent in charge of the San Juan School, and were arrested and taken away because of their bad conduct in connection with certain other Indians. It is thought that they should not be allowed to return to their old homes lest they should repeat their acts of former bad conduct. The good of the service appears to demand that they be required to remain on the southern part of the Navajo reservation under your immediate oversight. Their families, if they have any, should be allowed to join them there. The office would be pleased to have a report from you in regard to this matter. You are requested to correspond with Superintendent Shelton, at Shiprock, for further information respecting these prisoners, and as to whether it would be wise to adopt the course herein suggested, and make report to the office.

Very respectfully,

——— ———,
Acting Commissioner.

The SUPERINTENDENT IN CHARGE OF NAVAJO AGENCY,
Fort Defiance, Arizona.

NAVAJO INDIAN AGENCY,
Fort Defiance, Ariz., February 24, 1908.

SIR: Mele-yon, aNavajo prisoner referred to in Office letter, Land 7101/1908, File 175-4 of February 1, reached this agency on February 19 and is kept under reasonably close observation.

Superintendent Shelton has been notified of this man's arrival at Fort Defiance and requested to send over any near relatives of this man who may care to visit him.

Very respectfully,

WM. H. HARRISON, *Superintendent.*

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

WASHNGTON, *March 19, 1908.*

SIR: On March 2 the Office received a letter from the superintendent in charge of the Navajo Indian Agency at Fort Defiance, Ariz., saying that Mele-yon, a Navajo prisoner referred to in Indian Office letter of February 5, 1908, reached the Navajo Agency on February 19; that he has been kept under reasonably close supervision and that you have been notified of his arrival and requested to send over any near relatives of this man who may care to visit him.

For your complete information I inclose a copy of said Office letter, from which you will observe that it was expected that the War Department would release two Navajo prisoners at Fort Huachuca, Ariz., one of whom was in an advanced stage of tuberculosis that the whole matter was left to the discretion of that Department; that the superintendent in charge of the Navajo Agency was instructed to hold the Navajo prisoners when turned over to him until given final instructions as to their release; that the good of the service appeared to demand that they be required to remain on the southern part of the Navajo Reservation, under his immediate oversight, and that he was requested to correspond with you for further information concerning the released prisoners than that given in said Office letter, and as to whether it would be wise to adopt the course therein suggested.

As Mele-yon lived formerly on the northern part of the Navajo Reservation and was arrested and taken away because of his bad conduct in connection with certain other Indians, concerning which action you are thoroughly familiar, you are requested to give your views as to keeping him on the southern part of the reservation under the immediate oversight of the superintendent of the Navajo Agency.

No mention is made by the superintendent of the second prisoner. It is therefore presumed that he was not released by the War Department.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

The SUPERINTENDENT SAN JUAN INDIAN SCHOOL,
Shiprock, N. Mex.

SAN JUAN SCHOOL,
Shiprock, N. Mex., March 28, 1908.

SIR: I have the honor to acknowledge receipt of your letter of the 19th instant relative to the disposition to be made of Mele-yon, a Navajo prisoner, who is at present being kept under close supervision of the superintendent of the Navajo Agency at Fort Defiance, Ariz., and in which I am requested to give my views as to keeping him on the southern part of the reservation.

In reply I have to say that it is my opinion that should Mele-yon be returned to the locality from which he was taken prisoner of war and allowed to go free among his people it would create more or less excitement and anxiety among the Indians; it would create rumors and gossip among the Indians relative to the other prisoners and would cause more or less uneasiness among them. The Indians in that section have been very consistent among themselves since the ringleaders of wrongdoing were taken away; they have become loyal to the agency and employees working with them. They are showing considerable energy and interest in their welfare, many of them have worked the greater part of the winter in repairing and making roads, extending their irrigation ditches, and working for tools and farm implements; and I feel that the return of any of the prisoners would tend to do harm among them.

For these reasons I would very respectfully request that Mele-yon or anyone of the prisoners who may of necessity be released by the War Department be retained on the southern part of the reservation and under the immediate oversight of the superintendent in charge of the Navajo Agency.

Very respectfully,

WM. T. SHELTON,
Superintendent and Special Disbursing Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 8, 1908.

SIR: For your information I have to say that the Office is in receipt of a letter dated March 28, from the superintendent of the San Juan School, Shiprock, N. Mex., in regard to the disposition to be made of Mele-yon, a Navajo prisoner who is at the present time under your close supervision.

The superintendent was requested to give his views as to keeping this prisoner on the southern part of the reservation under your immediate oversight, and he expresses the opinion that should the prisoner be returned to the locality from which he was taken and allowed to go free among his people, it would create more or less excitement and anxiety among the Indians; also rumors and gossip among them relative to other prisoners, and to cause more or less uneasiness. He says that the Indians in the northern part of the reservation have been very consistent among themselves since the ringleaders of wrongdoing were taken away; that they have become loyal to his agency and employees working there; that they are showing considerable energy and interest in their own welfare; that many of them have worked the greater part of the winter in repairing and making roads, extending their irrigation ditches and working for tools and farm implements; and that he feels that the return of any of the Indians who were arrested and taken away would tend to do harm among the Indians in the northern part of the Navajo Reservation.

For these reasons he requests that not only Mele-yon, but any of the prisoners who may be of necessity released by the War Department from Fort Huachuca, be retained on the southern part of the reservation under your immediate oversight.

I concur in the views of the superintendent and request that you keep the Indian above named there under your supervision until otherwise instructed.

You were advised on February 5 that the commanding general, Department of the Colorado, said that it had been decided to release two Navajo prisoners at Fort Huachuca, Ariz., at once, one of whom was in an advanced stage of tuberculosis, and that he had requested to be authorized to turn them over to you at Gallup, N. Mex. You were also advised that the necessary instructions had been given in the premises, and you were directed to hold the two Navajo prisoners when turned over to you until further instructions.

It appears from subsequent correspondence in regard to this matter that only one prisoner (Mele-yon) has been turned over to you. I wish you would find out and tell me what became of the other prisoner.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

The SUPERINTENDENT IN CHARGE OF NAVAJO AGENCY,
Fort Defiance, Ariz.

NAVAJO INDIAN AGENCY,
Fort Defiance, Ariz., May 7, 1908.

SIR: Replying to Office letter of April 8, inquiring of the whereabouts of one of the prisoners who was taken from the San Juan division of the Navajo Reservation after the disturbance there last fall, I have the honor to state that I addressed the commanding officer at Fort Huachuca, Ariz., on this subject, and received in reply the following statement under date of April 19:

"From the records of this office it would appear, although made prisoner, Nick Lee was retained at Fort Wingate to be released after the departure of the other nine prisoners for Fort Huachuca, Ariz."

Immediately upon the receipt of the above I addressed the commanding officer at Fort Wingate, N. Mex., on the same subject, and received the following reply, under date of May 5:

"In reply to your letter, dated Fort Defiance, Ariz., May 2, 1908, I wish to inform you that per instructions from headquarters, Department of the Colorado, dated Denver, December 2, 1907, Nick Lee, not Nack Lee, as stated in your letter, was released from confinement at this station December 6, 1907, and left the post with sufficient rations on the morning of December 7, 1907, for Shiprock, N. Mex. Capt. H. O. Williard, Fifth Cavalry, notified me that on his recent trip to Shiprock, N. Mex., Superintendent W. T. Shelton informed him about April 27, 1908, that Nick Lee was in the vicinity of Shiprock, N. Mex."

Very respectfully,

W. H. HARRISON,
Superintendent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

[From the Report of the Commissioner of Indian Affairs, 1906.]

A NAVAHO DISTURBANCE SUPPRESSED.

Early in November, 1905, the superintendent in charge of the Navaho Agency, Ariz., asked by telegram that troops be sent to the agency to prevent threatened trouble. In his following explanatory letter he said that a vicious Navaho had, after attempting to commit rape, resisted arrest, and had been joined by three other disreputable and dangerous Navahos; that while he (the superintendent) was at Chin Lee these renegades, with about 15 other Navahos from Black Mountains, captured him and by threats forced him to agree to the pardon of the Indian who had attempted the rape, and that the immediate cause of his request for troops was that he feared these renegades would, as threatened, cause more serious trouble at a dance soon to be held by friendly Indians.

At the request of the Department of the Interior, based on a recommendation of this Office, the War Department ordered a detachment of troops to the scene, with the result that the threatened trouble was averted, and two other disaffected or rene-

gade Indians were arrested by the Indian police, supported by a small detachment of troops. A further result of the presence of the troops was an agreement on the part of the leading Navahos to arrest the remaining ringleaders of the disaffected Indians.

On December 7 the superintendent reported by telegram that the six leading Indians of the party who attacked him at Chin Lee were in custody, and added that they would not be sufficiently punished at the agency. He accordingly recommended that they be turned over to the troops and punished by confinement at hard labor at some military prison so far from their home that they would not be able to keep in communication with their friends. He suggested that three of the ringleaders—Denet Lakai, Tol Zhin, and Glahdy—who continued to defy the authorities, be imprisoned for two years, and Winslow, Tsosa Begay, and Ush Tilly for one year. He added that these prisoners belonged to the vicious, criminal, and worthless clan among their people; that the members of their clan had been guilty of the greatest number of crimes and misdemeanors committed by the Navahos, and that the suggested punishment would be far the best interests of this particular clan and also of the tribe.

I reported the matter to the Department in letter of December 13, 1905, with the recommendation that these Indians be taken by the military authorities to Alcatraz Island, California, and punished by confinement at hard labor for the terms suggested by the superintendent; and I added:

"I make this recommendation in one sense with regret, for I am always strongly in favor of employing the civil rather than the military agencies of government to execute justice among any Indians who are far enough advanced to understand what civil authority means when not visibly supported by arms. Among Indians who are citizens by virtue of accepting allotment I have always insisted that the civil machinery alone should be brought into operation for disciplinary purposes, and that the use of troops should be only as a posse where the constabulary found itself unable to cope with the situation. In the case before us, however, the offending Indians are not only noncitizens, but among the most ignorant and lawless people with whom the Office has to deal. They live remote from civilization, in a mountainous region almost never penetrated by whites because of the perils confronting a stranger there, and have always maintained an attitude of contempt toward the Government except when faced with the insignia of war. The great body of Navaho Indians, while unprogressive in the common acceptation of the term, are friendly and well disposed toward those white people who treat them decently. But it is obvious that this particular group needs to be taught a lesson which can be administered in no better way than by a practical demonstration of the power of the Government to exercise force when it becomes necessary to substitute force for gentle methods. The removal of the ringleaders in the recent trouble to a remote point would be surrounded with an atmosphere of mystery likely to be very impressive to those who remain at home. The humane treatment of the prisoners, which will be made apparent on their return, the compulsory instruction in labor which all six will receive, and the reports of their own experiences and that of their fellow-prisoners which will be brought back by the three released after one year's servitude will unquestionably have a great effect throughout that part of the reservation as well as upon the victims of discipline themselves. All the prisoners will have very interesting stories to tell their friends of the railroads and steamboats and populous cities they have seen, and of other wonders calculated to convey to the absolutely untutored Indian mind its only conception of the number and power of the whites; and these will go a long way toward quenching any further desire to defy the authority of the Government. I appreciate the fact that from a strictly technical point of view such treatment of offenders is anomalous; but, for that matter, so is the reservation system under which the Navahos have been brought up to the present time. At the worst, what I have here recommended would be but a logical evolution from the existing situation."

On December 11, 1905, Superintendent Perry reported, further, that since the prisoners had been brought in he had held a council with a large number of Indians from Chin Lee and the Black Mountains, at which it was disclosed that two or three years ago an Indian by the name of Do Yal Ke, who stayed with his with following at Chin Lee during the summer season and in winter in the Keams Canyon division of the Black Mountains, "held up" former Superintendent Burton, of the Moqui Indian School, and demanded of him certain things, which it seems he granted them; that Do Yal Ke was at Chin Lee when the recent trouble occurred and held a council with the Indians, in which he told them about his experience in holding up Superintendent Burton and advised them to capture Superintendent Perry and compel him to grant their request, as Burton had done, adding that if Perry refused they might just as well murder him, for otherwise troops would surely follow. Superintendent Perry said that on learning these facts concerning Do Yal Ke's conduct he had him arrested,

and recommended that he be sent with the other prisoners to Alcatraz Island and severely punished. The Office recommended this course in a letter of December 22, and the seven renegade Navahos were accordingly sent under military guard to the Alcatraz prison and entered upon their penal terms.

On May 8, 1906, S. M. Brosius, agent of the Indian Rights Association, wrote to the Office that he had learned that five of the prisoners had been in the hospital under treatment, and suggested that should it be found on investigation by the military authorities in charge of the prison that the damp climate of San Francisco harbor was impairing the health of the Indians they be sent to a more suitable climate to serve out the remainder of their sentences. This request was reported to the Department on May 19 with recommendation for an investigation. In answer the Assistant Secretary of War transmitted, under date of June 19, this report from the surgeon at Alcatraz Island concerning the physical condition of the Navaho prisoners:

"These Indians, coming from a dry, salubrious climate to a damp and chilly one, are extremely liable to contract respiratory and rheumatic affections. The latter class of disease is prevalent around San Francisco Bay, and it is feared that these men will contract it, as several have shown slight premonitory symptoms. For this reason it is believed that the climate of Arizona or New Mexico would be a preferable place for confinement."

The Office therefore wrote the Department on June 25 last that it was thought that it would be unwise to transfer the prisoners to a place near home, like Fort Wingate, Ariz., because there their punishment could not be made so effective; but suggested, in view of the surgeon's report, that the War Department be asked whether or not there was some suitable post in southern New Mexico or Arizona to which they could be removed.

On a visit to the Pacific coast in July, I went to see the prisoners at Alcatraz Island, and was impressed with the desirableness of sending them to a higher altitude and drier climate, and so wrote the Office, informally.

The War Department having responded that either Fort Apache or Fort Huachuca, Ariz., was available, the Office, in a letter of July 27 to the Department, suggested Fort Huachuca, as it appeared to be better situated for the retention of the prisoners, and on August 7 the Acting Secretary of War wrote to this Office that the necessary instructions had been issued to the commanding general of the Pacific division.

DISTURBANCES AMONG THE HOPI.

Although the incident is still incomplete, so much has been said in the public press about the recent disturbance at the Hopi mesa of Oraibi, Ariz., that it seemed to me to call for a few lines in this report.

A factional warfare has been in progress for a number of years between two groups of these Indians familiarly styled the "Hostiles" and the "Friendlies." The Hostiles comprise the ultraconservative element in the tribe, and their colloquial title has been given them because of their extreme opposition to the intrusion of white civilization. On the other hand, the liberal element have come to be known as the Friendly faction because it has not taken the same stand. Just how far the attitude of either party was due originally to its hatred or tolerance of Caucasian ideals is open to question. It is believed by not a few persons who know these Indians well that their division grew wholly out of the internal political dissensions of the tribe; that one of the factions conceived the device of declaring itself friendly to the United States Government, not because it felt so especially, but because it believed that by such a declaration it could win the favor of the Government and obtain an invincible ally in its struggle with the other faction; and that the tactical effect of this move was to force the opposition into an attitude of hostility toward the Government by way of keeping up something to quarrel about. I, for one, cherish no illusions as to the meaning of the professions of good will on the part of the Friendly faction. The Friendlies, deep down in their hearts, are Indians still, with the Indian instinctive dislike of our manners and customs as well rooted in them as it is in the Hostiles; but for strategic purposes, and with a larger sense of prudence than the Hostiles, the Friendlies have accepted the overtures of the Government, outwardly at any rate, and to that extent command official encouragement and approval, just as, in ordinary warfare, a mercenary who does what is expected of him stands on a wholly different footing from the enemy, although sentimentally he may be no more attached to the cause for which he is fighting.

Whatever may have been its origin, the situation at Oraibi has assumed within the last few months a phase too serious to be ignored. I have heard a good deal of what was going on, and, having known the Hopi Indians for some ten years, I was inclined to listen with caution to the stories brought to me, until I visited Oraibi last summer

and held a council with the Indians on their mesa. I was convinced by the conditions I found there that before long it would become necessary for the Government to show its strong hand and bring the Hostile party sharply to terms. This would be in order to prevent such a spread of the spirit of defiance of and contempt for the Federal authority as might breed violence and possibly bloodshed.

No one who does not know these Indians can have any conception of their crass ignorance and superstition. In a protracted colloquy with the chief of the hostile faction, after having exhausted all the milder arguments to show him the folly of longer resisting the inroads of civilization, I pointed out to him how much his people really owed to that very Government which he took such pains to decry and deride. I dwelt upon the patience the Government has shown in continuing its efforts to help him and his people in spite of their malevolence, and then asked him if he realized how swiftly and surely disaster would come upon them all if their powerful benefactor at Washington should withdraw its protecting hand. I pointed out to him how white and Mexican adventurers would pour into that country and swarm over the little holdings of the Indians; how the taxgatherer would swoop down upon their fields and their flocks and their crops, and how the authorities of the Territory would enforce the compulsory school law by not only carrying off the children to where they would receive the hated teachings of the whites, but fining and imprisoning the parents for neglecting their duty toward their offspring. I dwelt on the generous purposes of the Government, as demonstrated in its placing the little day school at the foot of his mesa, where the children could get the rudiments of learning without being sent away from home; on the way, when the taxgatherer came, the Government threw its shield over his people, insisting that until they were better educated they should be spared from paying any tribute toward maintaining the civic machinery; on the manner in which intrusions upon their lands had been met by their great patron, the intruders driven off, and every possible assistance given them to hold their own against further aggression. And in conclusion I put the question fairly to him: What would happen to the Oraibis if this powerful friend of theirs should become disgusted with their contemptuous and inimical demonstrations, close out its interests in the school and the agency, turn its back upon them, and leave them to their fate?

With a sneer the chief responded that such talk was all nonsense; that he had heard it many times before, but nothing came of it; that his people did not wish anything to do with the whites; that their fathers had warned them not to let their children go to school and learn white ways; that he intended to follow the advice of the fathers rather than of Washington, and that if his people got into any trouble they would be rescued by their "white brother who lives in the far east where the sun rises"—Montezuma. No logic or satire that I could summon to my assistance availed to shake his faith or the faith of the people behind him in the Montezuma myth and their assurance of the second coming of their Messiah whenever they needed him. Even when I reminded the old man that his people had no means of notifying Montezuma of their distress, he answered with sublime complaisance: "Washington will tell him!"

Of course it is useless to try to reason with anyone so absolutely bound up in superstitious ignorance as to argue thus in a vicious circle. It is with the purpose of emphasizing the hopelessness of attempting to meet such a situation with moral forces alone that I have given this brief review of the talk at the council. I took pains, however, to impress upon all the Indians whom I met on my visit to Oraibi that the Government intended that their children should have the opportunity to learn the simple lessons taught at the little day school, and that even their parents had no right to deprive the young people of what was a practical necessity of their lives now that they must, willy nilly, come into contact with white people. I explained that I had no purpose of forcing the higher branches of learning upon any of the Indians against their will, but that, as surely as the sun rose, just so surely would I compel, by all the means at my disposal, a recognition of the needs of the children and of their right to their A B C's and enough knowledge of numbers to enable them to take care of themselves in an ordinary trade. I told them that this was precisely what was required of the white people; that the laws past by the Great Council at Washington, called the Congress, clothed me with authority to make rules of a similar sort for the Indians; and that I intended to carry out this law at any cost, not only because it was law, but because it was right and the only fair thing for the children whom it was my special duty to protect. The children, I ought to add here in passing, seem fond of the school, and some even run away from home to attend it when their parents object.

One Indian, with whom I conversed longer than with any other, was the Friendly chief. The circumstances were somewhat peculiar, and, as will be seen, not conducive to a satisfactory mutual understanding. The council on the mesa was held in the open air on a moonless night in the plaza of the pueblo. Descending the trail,

I noticed that I was "shadowed" by three men, evidently Indians, who kept out of my way as long as anyone else was within speaking distance, but as soon as I was alone drew nearer. As I entered my room, which was in a little ell of the principal cottage at the foot of the mesa, the three men pushed in after me, and on striking a light I found my visitors to be the Friendly chief and two of his supporters. One of the two volunteered to act as interpreter, and informed me that the chief wished to ask me a few questions when no white men and no Hostiles were within hearing. The first was, Where had I come from? I answered that I was from Washington. What was my position? Commissioner of Indian Affairs, in charge of the people of his race all over the country. For what purpose had I come to Oraibi? To see with my own eyes the condition of the Oraibi Indians—how they were living, how the white employees of the Government were taking care of them, and so on. How long was I going to stay? I should leave probably the next day. Had I come to settle the quarrel between the Hostiles and the Friendlies? No; for that would take a longer time than I could spare then; and, moreover, I had been in hope that, like white people who had differences, they would get together, talk things over, and settle their troubles among themselves, instead of falling back, like so many little children, upon the Government. When was I going to remove the Hostiles from Oraibi, send them away to some distant place to live, and divide their land and other property among the Friendlies? I was not contemplating ever doing this. They knew better, for Superintendent Lemmon had told them this was what I was going to do; and now, how soon was I going to start the business? I thought they were mistaken; they had doubtless misunderstood Mr. Lemmon, who, I was sure, would not have transcended his authority by telling them that I was going to do so-and-so until I had settled on the plan and instructed him to announce it. No, indeed; they had not misunderstood Mr. Lemmon, he knew what Washington was going to do, and he had told them this again and again; if I didn't know it, that showed that I didn't know what Washington was about; so why did I say that I was from Washington and had charge of the Indians, when I was ignorant of this programme?

At this point I fear I further lost caste by letting my risibles get the better of my dignity. My visitors regarded my laughter with some astonishment and put the question again. I assured the chief that he would learn soon enough who I was and whether I was telling him the truth; that meanwhil ite would be safe for him to accept my statement so far as to avoid any needless friction with the hostiles, but to conduct himself with such forbearance as would comport with his position of chief; and that when I returned to Washington I would consider the situation very carefully and do whatever it seemed to demand for the best interest of all the Indians concerned. He wished to know whether I was not going to punish the hostiles in some way. I answered that resistance to the reasonable requirements of the Government would always call for discipline, but that this would be administered for specific acts, and not out of any malignant spirit toward the hostiles, for whom the Government had no hatred, but only pity for their ignorance and folly. He repeated his reference to the alleged Government plan for driving out the hostiles and dividing their estate among the friendlies, adding this time that the hostiles had grown steadily more aggressive and increased in numbers because of the Government's inaction, and that unless I took some steps to punish the hostiles and show my appreciation for the friendlies there would presently be no friendlies left.

I told him that that remark indicated a rather poor basis for the friendliness of his faction; that among white people a friend was one we loved and who loved us, without any hope of reward on either side; and that we always tried to be scrupulously just even to our enemies and kind to the helpless. By way of illustration of the white attitude, I told him about the Black Mountain Navahos who had been sent to prison for inciting riot, and about how I had gone into their country and called their people together and warned the well-behaved to avoid doing anything to injure the innocent families of the convicts, but to try to be as merciful as possible to these unfortunates, because they were not accountable for the wrongdoing of the men the Government had been obliged to punish. This view of the subject did not seem to interest the chief overmuch; his heart was set on the question of how to get rid of the hostiles, and he soon took his leave with a rather discouraged air.

Before I left the neighborhood, and after considerable discussion of the situation with the most intelligent white persons thereabout, I reached the conclusion that, much as such a resort is always to be deplored, I should probably have nothing left for me this season but to make a demonstration with troops which would convince the ringleaders of the hostile faction that they could gain nothing by further hostility.

But a crisis was reached prematurely. On the 7th of September, 1906, about the time we were preparing to open the Oraibi day school, the two factions came actually

to a physical struggle. I have had the matter investigated as well as practicable, and from all the testimony thus far elicited I deduce this general outline of the incident—subject, of course, to modification after a more elaborate inquiry shall have been made. It appears that the chief of the friendly faction, whose following was numerically only about one-half of the other faction, had received private information of a plot to assassinate him. A good while ago a group of Hopis of the village of Shimopovi, in active sympathy with the hostile party at Oraibi, had removed to Oraibi and taken up their residence there. This was done in utter disregard of the fact, perfectly well known to them, that there were not land and water enough in the agricultural area cultivated by the Oraibi Indians to support well any larger population than was already there. The hostiles of Oraibi naturally welcomed the immigrant contingent, as it promised to swell the hostile multitude there and increase its power in its conflict with the friendlies; whereas the friendlies were correspondingly irritated by it, for reasons easily understood.

The Shimopovis not only took possession of a share of the Friendly property to which they had no claim, but appear to have become a doubly disturbing element in the local factional quarrel. Indeed, the Friendly chief seems to have understood the plot against his life to be a Shimopovi rather than an Oraibi scheme. He resolved therefore to put the Shimopovis out of the Oraibi village. On the morning of September 7 he gathered his followers at his house, armed and prepared for fight. In some way the news leaked out, the Hostiles got ready, and the employees of the school received a hint of trouble impending. They at once repaired, in company with the field matron and one or two other interested whites, to the mesa top, where they visited the Friendly gathering and insisted that, whatever the Friendlies might do, no weapons should be used. They volunteered also to visit the Hostiles and serve the same notice upon them. The Friendlies consented after some consideration, but admonished the whites that time was flying and that whatever business they transacted with the Hostiles must be made as brief as possible.

The whites repaired to the house where the Hostiles were gathered and warned them also against the use of weapons. While they were still addressing the meeting the Friendly chief and his followers arrived—unarmed, as good faith demanded—and requested the whites to withdraw. When the Indians were left to themselves, as nearly as can be ascertained the Friendly chief gave the Shimopovi immigrants notice that they were no longer wanted in Oraibi and must quit the village at once. The Hostile chief responded that he had instructed his Oraibi followers to stand by their friends, the Shimopovi Hostiles, and protect them. The Friendly chief retorted that any of the Oraibi Hostiles who cast their lot with the Shimopovis would have to go also when the Shimopovis went.

Thereupon the Friendlies set about clearing the village of Shimopovis. They began on the very spot where they then stood; but every Friendly who laid hold of a Shimopovi to put him out of doors was attacked from behind by an Oraibi Hostile, so that the three went wrestling and struggling out of the door together. It was a very vigorous clash, though only hands and feet were used and no weapons drawn on either side. The Friendlies were not particular as to how they disposed of their enemies, but clutched them by their clothing or their extremities or their hair, as might be most convenient. When they had cleared that house they made a circuit of the rest. The evicted Hostiles were driven to a point outside of the village and herded and guarded there.

The present Hostile chief is a usurper and has maintained his authority among his followers by the same means resorted to by leaders of superstitious mobs ever since the world began—getting up dreams and omens and prophecies to order and distorting all the commonest events of life into fulfillments of his prognostications. Consistent to the last, he went about on this fateful day with a complacent air, declaring to his people that all that they were passing through now was but a fulfillment of a prophecy which had said that one or the other party would eventually be driven off the mesa forever, and that the decision of who should go and who should stay was to hinge upon the ability of one party to push the other across a certain line which should be drawn on the ground. A tug of war of very primitive character then ensued, and the Friendly party, representing only about one-third of the tribe, actually succeeded in pushing the Hostile party, comprising the other two-thirds across the established line. This settled the business, and the Hostiles withdrew to a place in the desert, about 5 miles distant, where there is good water, and encamped.

Meanwhile the whites had induced the victorious Friendlies to permit the Hostiles to return to the village, in groups of three at a time, long enough to gather up food and clothing. Of course the very old Hostiles, the babies, and the women soon to become mothers have been the chief sufferers from the exposure and discomforts of camp life. I am now taking measures to relieve the immediate necessities of the sick

and helpless, and have endeavored to break the spell which binds the Hostile faction to their usurper chief by notifying them that any of their number who feel disposed to forsake their folly, become loyal to the Government, and pledge themselves to be peaceable, may return to Oraibi, the Government guaranteeing them readmission.

Some signs of weakening have shown themselves in the Hostile ranks, but not enough to encourage a hope of their general dissolution. The problem presents some most unusual phases. The office has been embarrassed by other necessities of the service which have prevented its sending to Oraibi the particular inspecting officers most competent to cope with conditions like those described. This has delayed proceedings considerably, but I have felt that it would be better to go slow and make fewer mistakes than to plunge in and attempt to straighten out a tangle which might only be made worse through an error of hasty judgment. All that I can do, therefore, for this report is to rehearse the preliminaries as I have been able to make them out from the testimony now before the Office, without venturing to make public the alternative plans which I have under consideration, to be pursued according to the way the situation develops on closer scrutiny and more satisfactory analysis.

[From the Report of the Commissioner of Indian Affairs.]

THE UPHEAVAL AT ORAIBI.

The troubles between the two factions known as the "friendlies" and the "hostiles" in the Hopi pueblo of Oraibi in Arizona were not settled at the time my last report was made. Their differences, political and religious, had culminated in the forcible but bloodless eviction of the local hostile party and their sympathetic visitors from Shimopovi by the friendlies in the early days of September, 1906.

Though no arms and so little unnecessary violence were used in the final act of this little drama, one or two hostiles were slightly hurt in the scuffle. For them, and a few others who fell ill later, a temporary hospital was established in one of the Indian houses on the mesa. Every effort was made also to reduce the conditions in the hostile camp to the normal state of comfort known to these Indians by allowing any who wished to return to their old dwellings and bring away such provisions and other belongings as they needed. The site chosen for the camp was remote enough from the pueblo to avert any immediate danger of further physical conflict between the factions.

Authority was granted to the superintendent in charge for the temporary employment of 25 Navaho police should their services be necessary. Pending the arrival of a representative of the Office, the superintendent was directed to ascertain how many of the hostiles would be willing to cut loose from the leadership of the chief agitators and return to the mesa or to some point near by under pledge no longer to resist the authority of the Government; to warn the friendlies not to molest the hostiles who behaved peaceably; to reopen the day school at Oraibi as soon as practicable, and to see that all children living in or near the pueblo were placed in school, the parents having the privilege of choice as between the day school, the boarding school at Keams Canyon, and any others open to Hopi children.

Meanwhile, on my personal knowledge of the nature and attitude of the Hopis obtained during ten years' acquaintance with them in their own country, confirmed or modified by consultation with a number of other persons on the ground who were familiar with the Hopis and cognizant of the facts in the Oraibi affair, I formulated a programme to be pursued, with such minor changes in detail as current developments might render expedient. This programme was discussed with the President and the Secretary of the Interior, and carried into effect with their approval. Its chief features may be set forth seriatim thus:

"(1) That the Shimopovi intruders, who appear to have stirred up all the latest trouble, who never had any rights in the Oraibi pueblo, and who by abusing them have forfeited even the privileges of courtesy, be ordered to return to their own pueblo instantly;

"(2) That the Oraibi hostiles, except the chief agitators Yu-ke-o-ma and Ta-wa-hong-ni-wa, be permitted to return for the winter to Oraibi, on their pledge of peaceable conduct, and a like pledge to be exacted from the friendlies that they shall be kindly treated; this to be understood as only a temporary arrangement to prevent suffering during the approaching winter, as the rest of the programme will be worked out by the Government before spring;

"(3) That Yu-ke-o-ma and Ta-wa-hong-ni-wa be allowed to take their personal effects from Oraibi, including the season's crops, and to give these to their families for subsistence; but themselves to be notified that, as disturbers and inciters of their people to resistance of the Government, they must leave the Hopi country at once;

their refusal, or their return after removal, to be punished by imprisonment at hard labor;

"(4) That the ringleaders in the riots at Shimopovi early in the last school year be removed under arrest and confined in a military prison at hard labor, for such terms, in no case less than one year, as their respective offenses seem to justify;

"(5) That in announcing to Yu-ke-o-ma the decree of the Government in his case he be reminded that I reasoned earnestly with him last summer at the night council on the Oraibi plaza, and tried in a friendly way to show him the folly of his course, and that his only response was an insolent defiance; and that, in now turning for help to the same Government which he has always scoffed at, derided, and urged his people to resist, he is playing the part of a coward instead of a manly foe;

"(6) That any other persons besides the two hostile chief agitators already mentioned by name, and the ringleaders in the Shimopovi riots, who may, on later investigation by the Indian Office, be convicted of habitual trouble making, be imprisoned or banished;

"(7) That Ta wa quap te wa, the chief of the friendly faction, be allowed to retain his priestly orders, but be deposed from his political chiefship until he has fitted himself by acquiring enough knowledge of English to be able to speak and understand fairly the language of the Government of our country and the laws for the instruction and guidance of the people he aspires to rule, and that for this purpose he be given his choice between a local school and a nonreservation school;

"(8) That the whole Oraibi populace be notified that the Government intends to have their children sent to school somewhere, just as all white communities are required by their governments to send their children to school somewhere, till they have learned enough to take care of themselves properly and to start them on the road to citizenship; that they be given a free choice between sending their children to the day school or sending them to Keams Canyon, and that when they have decided this point, their decision be duly attested and themselves compelled to hold to it in good faith, so that the children shall not be continually shifting about;

"(9) That like notice be given and the same option extended at Shimopovi;

"(10) That at both villages the parents who refuse to send their children to the day school be considered to have elected in favor of Keams Canyon, but that the officer to whom is assigned the task of obtaining their decisions be not anyone connected regularly with Keams Canyon School, as this whole business must be kept free from even the suspicion of unfairness or needless duress, the only compulsory feature of it anywhere being the demand that every child shall be given some schooling one place or another;

"(11) That especial pains be taken to make all the Indians understand that the Government has reached the limit of its patience with the old way of handling such matters, and that hereafter the Indians must conduct themselves reasonably like white people, or be treated as white people are treated who are forever quarreling and fighting among themselves;

"(12) That until normal conditions are restored and in the opinion of the Government it will be safe to let the Indians control once more their own domestic affairs, the pueblo of Oraibi be governed by a commission consisting of the teacher in charge of the day school, who shall preside, the old judge who represents the friendly faction in the local Indian court, and a judge chosen from the hostile faction by the superintendent or inspecting officer who may be in charge of the reservation at the time this programme goes into operation;

"(13) That regular troops be sent to Oraibi to preserve order while the foregoing arrangements are in progress, and to make arrests as indicated here or as directed by the superintendent or inspecting officer in charge:

"(14) That immediate steps be taken, by administrative measures under existing laws or by procuring new legislation if that be necessary, looking toward the early allotment of land in severalty to the Hopis."

At the time of the troubles all our inspecting officers were engaged in other important work from which they could not be withdrawn without serious prejudice to the interests involved; but the services of Supervisor Reuben Perry became free about the middle of October, and he was detailed to execute the policy outlined above. In the meantime, the teachers, field matron, and other employees in the Oraibi district had sought by argument and kindly persuasion to bring the hostiles to an appreciation of their situation and the injury they were doing themselves by holding out against the Government. These efforts availed nothing, for when the supervisor arrived he found the Indians in the same unyielding attitude. By orders from the War Department, Troops H and K of the Fifth Cavalry, under command of Capt. Lucius R. Holbrook and Lieutenant Lewis, were placed at the service of the Office and reached the village on October 27. The next morning all the male Indians

were assembled at the schoolhouse to hear what Washington had to say and to accept or reject the proposals offered. As far as the hostiles were concerned, the result confirmed the wisdom of having troops at hand. Although Mr. Perry patiently and laboriously set before them the benevolent purposes of the Government and the absence of any intention on its part to interfere with the religion of the Indians or their customs except where these came into collision with the law of the land, they remained, to a man, stubbornly resistant.

Yu ke o ma and Ta wa hong ni wa, indeed, renewed and persisted in a demand, which they had made from the beginning of the troubles, that the friendly chief should be beheaded and they and their followers returned by force to Oraibi. It was obvious, as I had foreseen in making up my programme, that no impression could be made upon the great mass of their followers as long as they remained where their advice could be heard and heeded. They were therefore publicly deposed from their usurped authority and at once arrested, together with 27 of the most conspicuous mischief-makers—including 12 Shimopovis—placed under guard, and taken to Keams Canon. There their cases were individually considered, and, according to the flagrancy of their respective misconduct, they received, with twelve exceptions, sentences to confinement at hard labor for terms ranging from one to three years. The exceptions were one aged man, who was regarded as too infirm for such punishment, and eleven at the other extreme of life who were, on account of their youth and apparently to their own great relief, ordered to go to school instead of to prison. They expressed a preference for Carlisle, and were accordingly sent there, in care of Lieutenant Lewis, as soon as the necessary arrangements could be made. After Yu ke o ma and Ta wa hong ni wa had had a brief taste of the punishment decreed for their colleagues, they were set free with a warning not to return to their old haunts. I am in hope that before the others—who have since been transferred to Fort Huachuca—are released and return, the tribe as a whole will have so far advanced in appreciation of the authority of the Government, if not of its good purposes toward them, that ignorant agitation and blind subservience to senseless leadership will have become less the settled rule among them.

Indeed, it was plain, from the hour of the removal of the ringleaders in disturbance, that a part of the spell they had exercised over the rest had been broken; for at a later meeting, under encouragement of the supervisor to be more like men and think and act for themselves, 25 hostiles forsook the recalcitrant band and signed an agreement to obey the law of the land, let their children go to school, and live in peace with their neighbors. Thereupon they were sent back to Oraibi under a guaranty of right treatment by the friendlies in occupation there. Of the rest, 53 renewed their declaration of hostility to the Government and were placed under arrest; and upon these, and 20 more who were arrested the next day, a sentence of ninety days at hard labor on the roads of the reservation was imposed.

Immediately after the arrests the children were gathered in, those whose parents consented being placed in a local day school, and 117 others sent to Keams Canyon. They not only did not shed any tears, but seemed much pleased to go. This was most gratifying; since, but for the sake of these little ones and the responsibility, both moral and legal, resting upon me to see that they should have their chance in life as our own children have theirs, I should not have deemed it worth while to attempt anything more at this time than to put a quietus upon the quarrel between their elders. The simplest humanity, however, demanded such intervention as I made in the children's behalf, where their parents were so utterly devoid of foresight or reason with regard to their fundamental interests.

With the removal of the long-sentence prisoners from Keams Canyon to Fort Wingate, we were able to dispense with the services of the troops on the reservation. And I wish, before closing this chapter of a unique story, to record thus publicly, as I have already in my formal official correspondence, my appreciation of the fine handling of their work by the military contingent. The sympathetic yet discreet counsels of the commanding officer, Captain Holbrook, and the admirable discipline of the men, contributed in the largest measure to the successful issue of a very delicate and difficult undertaking.

At the outset of this whole complicated business it was assumed that the hostiles evicted from Oraibi would build another village somewhere; and my purpose was not only to let them choose its site for themselves but to lend them such encouragement and aid as I could consistently with the other plans in hand. In addition, I was going to give the new village a day school of its own, if the Indians would make use of it in good faith, either under compulsion or otherwise. Or, in case later the two factions could be brought to tolerate each other as neighbors and settle down in peace together in the old pueblo, it was my wish to help them improve the place, and I should have increased the capacity of the present day school to the point of accommodating all the children. Other projects for their welfare are under consideration, one of them being a hospital to be erected by private munificence and run on a cooperative plan.

But all these matters had to be pushed aside to make way for the immediate needs of the hour and the still difficult disposition of the Indians. The women and children were provided with temporary but comfortable quarters for the winter at their camp at Hotevilla. The 25 men who had renounced their active hostility were kept busy during the fall with their crops; and the group who were working out their ninety days' sentence on the roads could not, for obvious reasons, have their occupation changed to village building among their relatives and friends. By the expiration of their term it was time to fall to upon the preparation of the new season's crops. Just before their release 6 of their number agreed to the Government's terms and were permitted to take their children with them and go back to Oraibi, where the little ones could attend the day school. The children of the others were not allowed to go home for vacation, as it would have been practically impossible to recover them if they had once been out of the Government's custody while the parents continued actively hostile. I may add that during their period of enforced labor the prisoners, among other things, built 15 miles of new road out of Keams canyon in the direction of Holbrook, which shortened the distance to the agency several miles and added greatly to the safety of travel. I went over it myself last summer and was greatly impressed by its workmanlike appearance. While they were still thus employed I submitted to them a proposition which had been laid before me for their further employment in the beet fields at Rocky Ford, Colo., but they refused to consider it, notwithstanding the pecuniary profit which such a contract would have brought them. Acceptance, of course, would have meant an absence of some months, a dreaded association with new and strange people, their adoption to some extent of the white man's habits and their subjection to his laws.

With the release of the prisoners, the superintendent recommended that some one representing the Government be stationed at Hotevilla. He was therefore authorized to employ a policeman, and one of the now loyal hostiles was appointed to the position and appears to be doing his duty creditably. I went to the "hostile" camp, so called, while I was at Oraibi in May last, and was pleased with what I saw. It deserves its designation as a camp, as distinguished from a new pueblo, only because the houses are separate and more or less scattered, instead of being built against or on top of each other like the cumulative chambers of a wasp's nest. It is a more wholesome and generally better arrangement, and I entertain some hope that this style of building will presently supplant the old style in the preference of the people. Although rather more roughly put together than the pueblo houses, the new dwellings appear pretty comfortable, and their inhabitants as contented as could reasonably be expected under existing conditions.

I have devoted so much space to the conduct and fate of the hostiles that I seem almost in danger of overlooking what has occurred in the friendly faction. While Yu-ke-o-ma was spitting defiance at the Government and calling for the head of his victorious foeman, the latter was proving his greater intelligence and worldly wisdom by accepting the inevitable with as good grace as the rather trying imposition upon himself would permit. The idea of going to school at the age of thirty-odd years was not attractive, naturally, to Ta-wa-quap-te-wa; but he promptly set his followers an example of confidence in the Government, merely asking the privilege of taking his wife and family with him and retaining his Indian costume and long hair. This request I granted the instant it was submitted to me, although, as far as I am aware, the concession was unique in the annals of our school service. Frank Se-wen-imp-te-wa, the prospective governor of the Moencopi Hopis, who had got himself involved in the turmoil at Oraibi, although it was none of his business, was granted a similar privilege, and both men chose the training school at Riverside, Cal., for their alma mater. It required some overhauling of the local arrangements and some revision of the rules to accommodate this oddly assorted party; but Superintendent Hall showed no symptoms of panic at the prospect of the innovation, and, as usual, proved himself equal to the emergency. Quarters were prepared, and in a little while the visiting public were treated to the unusual spectacle of two Indian chiefs and their entire families gathered in an institution of learning to prepare them for treading together the road to civilization.

The wisdom of sending these families to school was confirmed at once. Within a few days after his arrival at Riverside, Ta-wa-quap-te-wa voluntarily presented himself to be shorn of his braids, and asked for a hat and a uniform like those which the other pupils wore. About twenty of the friendly children had been sent by their parents to Riverside with the chief; and a few weeks ago I gave the superintendent authority to let him return to Oraibi as a recruiting agent for the school. How well he is getting on with his studies is evidenced by the fact that he can write letters home; and when I was at the school in June he sought me out and exchanged a few sentences of conversation with me in very intelligible English. During the

summer vacation he has found employment on one of the fruit farms near Riverside at first-class wages; and the last I heard of him he was inquiring the price of a second-hand bicycle, having in mind the saving of time he could accomplish by riding to and from his work every day. And this is the Indian whom I described in my last year's report as shadowing me down the mesa trail after my starlight council with the hostiles of the pueblo, and holding a midnight conference with me at my quarters, with the necessary aid of an interpreter.

Yet Ta-wa-quap-te wa's path has not been wholly thornless, even since he adopted the new order so completely. After reaching Riverside he of course continued to feel an interest in home affairs; it presently came to light that he had delegated his brother to act as chief during his absence, and, probably because of appeals from his representative had sought to direct matters in the village by correspondence. Now this was not according to my programme. The government of Oraibi I had placed in the hands of a commission, and it seems that the actions of the friendly judge who was serving on this commission did not always please some of the friendly faction. Investigation proved, however, that the very reasons they assigned for urging his removal were the best ones in the world for keeping him in office. It was thought wise, therefore, for the supervisor to take a representative from Oraibi to Riverside to talk things over with Ta-wa-quap-te-wa. This stroke of diplomacy did the business. The conference soon reached an understanding as to the status of the governing body, and the interference of the school-going chief came to an end.

In concluding this bit of history I would say that Supervisor Perry, who dealt with the trying crisis at Oraibi as my representative and straightened out the tangles on the civil side of it, was in constant and close communication with me all the time by wire. He was cautioned throughout against any measures which would bring unnecessary hardship upon the poor, benighted creatures with whom we had to deal; to keep the situation always firmly in hand, but never to force it; to induce submission rather than reduce the Indians to it; to repeat to the hostiles, whenever occasion offered, my message that the Government was their best friend, was trying to help and not to hurt them, and had no vengeful feeling for anything that was past, but would welcome them as cordially as the friendlies to its care when they got ready to come; to exact from the friendlies just and fair treatment of the hostiles, and to make everyone understand that the Government took no sides in the local quarrels over religious matters, but that Washington's platform was simply peace, education, and conformity to law. These instructions Mr. Perry appears to have carried out in both letter and spirit.

NAVAJO PRISONERS.

In my last report I gave an account of the suppression of a disturbance among the Navajo Indians by the arrest of seven men involved in an insurrectionary attempt, and their imprisonment at hard labor on Alcatraz Island, in San Francisco Harbor. After a few months' confinement there I felt some fear that the dampness of the climate, to which they were wholly unaccustomed, might affect their health, and had them transferred to Fort Huachucha, in Arizona.

On October 12, 1906, the one-year sentences of Winslow, Tsosa Begay, and Ush Tilly, with commutation for good behavior, expired and they were returned to the Navajo Reservation. In June, 1907, the two-year terms of the other four (Do-yal-ke should have been included)—DenetLakai, Cladhy, and Tolghin—allowing for commutation, expired, and they were accordingly delivered at the agency by the War Department.

For the care and transportation of these prisoners the War Department has submitted vouchers in the sum of $2,375.12, and the claims have been forwarded to the Auditor for payment.

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60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 520.

TRUSTEES OF METHODIST EPISCOPAL CHURCH SOUTH, PERRYVILLE, KY.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE CASE OF TRUSTEES OF THE METHODIST EPISCOPAL CHURCH SOUTH, OF PERRYVILLE, KY., AGAINST THE UNITED STATES.

MAY 26, 1908.—Referred o the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, May 25, 1908.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES W. FAIRBANKS,
President of the Senate.

[Court of Claims. Congressional, No. 13012. Trustees of the Methodist Episcopal Church South, of Perryville, Ky., *v.* The United States.]

STATEMENT OF CASE.

This is a claim for use and occupation alleged to have been furnished to the military forces of the United States during the civil war. On the 2d day of March, 1907, the United States Senate referred to the court a bill in the following words:

"[S. 7120, Fifty-ninth Congress, second session.]

"For the relief of the Methodist Episcopal Church South, of Perryville, Kentucky.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the trustees of the Methodist Episcopal Church South, of Perryville, Kentucky, the sum of one thousand two hundred dollars, in full compensation for the occupation, use, and incidental injury to said church by United States military forces during the civil war."

The said trustees of said church appeared in this court March 22, 1907, and filed their petition, in which it is substantially averred that:

During the late civil war the military authorities of the United States took possession of the property of the Methodist Episcopal Church South, of Perryville, Ky., consisting of a large, well-constructed brick church building, about 60 feet by 40 feet